TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 274.

ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN WILLIAMS, AS COMMISSIONER OF LABOR OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JUNE 12, 1913.

(23,251)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 21, 1914.

a Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the Court of Appeals, held at the Capitol, in the City of Albany, on the 14th Day of June, in the Year of Our Lord One Thousand Nine Hundred and Ten, Before the Judges of said Court.

Witness, the Hon. Edgar M. Cullen, Chief Judge, presiding.

R. M. BARBER, *Clerk.*

Remittitur June 15th, 1910.

b ERIE RAILROAD COMPANY, Appellant,
ag'st
JOHN WILLIAMS, as Commissioner of Labor, etc., Respondent.

Be it remembered, that on the 4th day of February, in the year of our Lord one thousand nine hundred and ten, Erie Railroad Company, the appellant in this action, came here into the Court of Appeals, by George F. Brownell, its attorney, and filed in the said Court a Notice of Appeal and return thereto from the Judgment of the Appellate Division of the Supreme Court in and for the third Judicial Department. And John Williams, as Commissioner of Labor, etc., the respondent in said action, afterwards appeared in said Court of Appeals by Edward R. O'Malley, Attorney General.

Which said Notice of Appeal and the return thereto filed as aforesaid, are hereunto annexed.

c Whereupon, the said Court of Appeals having heard this cause argued by Messrs. George N. Orcutt and Alexander S. Lyman of counsel for the appellant, and by Mr. Edward R. O'Malley of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from in this action, be in all things affirmed. And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this Court.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court be remitted to the said Supreme Court, there to be proceeded upon according to law.

d Therefore, it is considered that the said judgment be in all things affirmed with costs as aforesaid, and stand in full force, strength and effect.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals, remitted into the Supreme Court of the State of New York, before the

Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *June 15th*, 1910.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.] R. M. BARBER, *Clerk.*

1 Supreme Court, Appellate Division, Third Department,
Albany County.

ERIE RAILROAD COMPANY, Plaintiff-Appellant,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant-Respondent.

Statement under Rule 41.

This action was begun in the New York Supreme Court, Albany County, by the service of a summons and complaint on the defendant above named on the 5th day of November, 1908, the defendant appeared by Hon. W. S. Jackson, then Attorney General, who served a demurrer to the complaint on the 10th day of December, 1908. Hon. Edward R. O'Malley, as Attorney General of the State of New York appeared for the defendant, on and subsequent to January 1st, 1909. By order duly entered herein on the 6th day of February, 1909, defendant was permitted to withdraw his demurrer, and to serve an answer. The defendant's original answer was served on the 25th day of February, 1909, and the amended answer, by
2 consent of the parties, on the 19th day of April, 1909. The name of the plaintiff is "Erie Railroad Company." The name of the defendant is "John Williams, as Commissioner of Labor of the State of New York," and the said parties are the original parties to this action. George F. Brownell, Esq., is the plaintiff's attorney and Hon. Edward R. O'Malley, Attorney General of the State of New York, is the defendant's attorney. No change in the parties or their respective attorneys has taken place, except as above stated.

Notice of Appeal.

Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

Please take notice that the above-named plaintiff, Erie Railroad Company, hereby appeals to the Appellate Division of the Supreme Court for the Third Department, from the judgment of this Court entered and filed herein in the office of the Clerk of the County of Albany on or about the 4th day of August, 1909, whereby it was adjudged that the complaint of the plaintiff herein be dismissed,
3 and that the said defendant recover of the said plaintiff the costs of this action, and the said plaintiff appeals from each and every part of said judgment as well as from the whole thereof.

Dated, New York, N. Y., August 9th, 1909.

GEORGE F. BROWNELL,
Plaintiff's Attorney.

No. 50 Church Street, Borough of Manhattan, New York City.

To the Clerk of the County of Albany, and Edward R. O'Malley, Attorney-General, Attorney for Defendant, Albany, N. Y.

Summons.

New York Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

Trial Desired in Albany County.

To the above-named Defendant:

4 You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated November 5, 1908.

GEO. F. BROWNELL,
Plaintiff's Attorney.

Post Office Address and Office, No. 50 Church Street, New York, N. Y.

Complaint.

New York Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
vs.
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

Plaintiff, for a complaint against the defendant, alleges:

First. Erie Railroad Company is a domestic corporation, created and existing under and by virtue of the laws of the State of New York.

5 Second. The Defendant John Williams is the duly appointed, qualified and acting Commissioner of Labor of the State of New York.

Third. The plaintiff operates and maintains a railroad, the main line of which extends from Jersey City, in the State of New Jersey, to Marion, in the State of Ohio. From Jersey City the road runs for about thirty miles in the State of New Jersey, then enters the State of New York, through which it runs for about fifty-nine miles, then enters the State of Pennsylvania, through which it runs for about twenty-six miles, then enters the State of New York, through which it runs about sixty-eight miles, then enters the State of Pennsylvania, through which it runs for about twenty-two miles, then enters the State of New York, through which it runs for about two hundred and fifty-five miles, then enters the State of Pennsylvania, and from thence west it passes through the State of Pennsylvania and part of Ohio. There are branch lines extending from the main line to Buffalo, Rochester, Newburgh, Haverstraw, and New City, N. Y., and also other branch lines extending from points within the State of New York into the States of Pennsylvania and New Jersey. There are short branch lines operated by the plaintiff, both within and without the State of New York. Plaintiff also operates and maintains sundry car floats and other floating equipment, navigating the navigable waters of the United States.

Fourth. All and singular the said railroads, bridges, ferries and floating equipment, and the maintenance and operation thereof are devoted to and used in the carrying on by plaintiff of the duties, service and business of a common carrier of persons and property as well between points within the State of New York, and under

6 and in compliance with tariffs duly promulgated and filed by plaintiff under the laws of the said State regulating the said transportation service, as also and to a very much greater extent between points respectively within and points respectively without this State, and between points of origin and points of destination respectively without this State, and between points of origin and destination within this State where the route of transportation passes through other States, all under and in compliance with tariffs and concurrences in tariffs duly promulgated by plaintiff and by it filed with the Interstate Commerce Commission of the United States,

as also to and in the carrying of the United States mails under and pursuant to the contracts with and regulations prescribed by the United States.

The operating divisions of the main line of said railroad east of Meadville, Pa., are as follows: The New York Division, extending from Jersey City, in the State of New Jersey to Port Jervis, in the State of New York; the Delaware Division, extending from Port Jervis, in the State of New York, to Susquehanna, in the State of Pennsylvania; the Susquehanna Division extending from Susquehanna, in the State of Pennsylvania, to Hornell, in the State of New York; the Allegany Division, extending from Hornell, in the State of New York, to Salamanca, in the State of New York, and the Meadville Division, extending from Salamanca, in the State of New York, to Meadville, in the State of Pennsylvania. As a rule, trains run over an operating division without change of employees. There are operating divisions other than those mentioned, some of which are interstate, and some of which are wholly within the State of New York.

Fifth. In and about the carrying out of the functions
7 aforementioned, said plaintiff has in its service as its employees upon that portion of its railroad lying east of Meadville, Pa., upwards of fifteen thousand (15,000) men, who are employed either wholly within, or partially within, the State of New York. The greater part of these men render service partly within and partly without the State of New York. All employees are employed in and about and in connection with and incident to transportation service carried on and performed by plaintiff, and very nearly all of them are so employed in the movement of interstate commerce during the greater part of the time of their service, and all are so employed during a part of the time of their service. The principal part of the business of the plaintiff is the transportation of persons and property from one State to another State or upon a route passing between different States, and this business is carried on upon every part of the railroads, floats and ferries operated by plaintiff. Several hundred of the employees of the plaintiff are employed in service upon and in connection with the maintenance or operation of various car floats and other floating equipment used in and upon the navigable waters of the United States, principally the waters lying between the States of New Jersey and New York, and the waters lying between the port of Buffalo, N. Y., and the ports of other States to the westward thereof. The great majority of the employees referred to in this Fifth paragraph of this complaint actually render service in more that one State. Many of them who reside in Pennsylvania or New Jersey render a part of their service in the State of New York. Many of them who reside in the State of New York render a part of their service in the State of Pennsylvania or in the State of New Jersey. The con-
8 tracts of employment of many of them were made, and in the future must be made, in States other than New York, in which States many of said employees reside, and will reside, although a part of their service to plaintiff is and will be rendered in the State of New York.

Sixth. In and by the laws of the State of New York, by and under which plaintiff became and is such domestic corporation, there was conferred upon and vested in plaintiff the corporate franchise and power, among other things, to acquire, maintain and operate the said railroad as aforesaid, the right and power to acquire possession of and to possess, maintain, operate and use, in conformity with the charter powers under which the same were constructed, the various roads possessed, maintained and operated by it as aforementioned, and to acquire, possess, maintain and operate as aforesaid, the said bridges, ferries, car floats and other floating equipment; and in every such behalf to contract and be contracted with, among other things, in and for the employment of persons to carry on all and singular the said enterprises at and for such wages and upon such terms of payment thereof as should or might be mutually agreed upon by and between it and the persons so employed; and thereunder it hath been and is customary and usual for plaintiff to pay its employees monthly, and thus to pay them prior to or by the twentieth day of each month the wages earned during the preceding month.

The very great majority of the present employees of the Erie Company were in its service prior to January 1st, 1908, and all of its employees accepted such service with knowledge of the general and uniform custom of the plaintiff to pay its employees as
9 hereinbefore stated. Prior to January 1st, 1908, there existed, and since that time has existed and now exists, a contract between the plaintiff and its employees that the wages of the latter should be paid monthly, as hereinbefore in this Sixth paragraph of this complaint stated. The payment of the wages of employees by steam surface railroad corporations once a month as distinguished from twice a month is not inconsistent with the public interest or hurtful to the public order or detrimental to the common good.

Seventh. In and by the statute known as The Labor Law, being Chapter 32 of the General Laws of the State of New York, Section 4, as amended by Chapter 567 of the Laws of 1899, it is provided as follows:

"SEC. 4. Violations of the Labor Law.—Any officer, agent or employee of this state or of a municipal corporation therein having a duty to act in the premises, who violates, evades or knowingly permits the violation or evasion of any of the provisions of this act shall be guilty of malfeasance in office and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee, otherwise by the governor."

And in and by Section 9 thereof, as amended by Chapter 443 of the Laws of 1908, it is provided as follows:

"SEC. 9. Cash Payment of Wages.—Every manufacturing, mining, quarr-ing, mercantile railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every
10 water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or any municipal corporation thereof, either as a contractor or a sub-contractor therewith, shall pay to each employee engaged

in his, their, or its business, the wages earned by such employee in cash. No such company, person, firm or corporation, shall hereafter pay such employees in script, commonly known as store money-orders;"

and in and by Section 10 thereof, as amended by Chapter 442 of the Laws of 1908, it is provided as follows:

"SEC. 10. When Wages are to be Paid.—Every corporation or joint stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employee the wages earned by him to a day not more than six days prior to the date of such payment. But every person or corporation operating a steam surface railroad, shall, on or before the first day of each month pay the employees thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding calendar month;"

and in and by Section 11 thereof, it is provided as follows;

"SEC. 11. Penalty for Violation of Preceding Sections.—If a corporation or joint stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of an
11 employee, as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the factory inspector in his name of office in a civil action; but an action shall not be maintained therefor, unless the factory inspector shall have given to the employer at least ten days written notice, that such action will be brought if the wages due are not sooner paid as provided in this article."

"On the trial of such action, such corporation or association shall not be allowed to set up any defense, other than a valid assignment of such wages, a valid set off against the same, or the absence of such employee from his regular place of labor at the time of the payment, or an actual tender to such employee at the time of the payment of the wages so earned by him, or a breach of contract by such employee or a denial of the employment;"

and in and by Section 21 thereof, as added by Chapter 192 of the Laws of 1899, it is provided as follows:

"The factory inspector shall enforce all the provisions of this article. * * *;"

and in and by Section 30 thereof, as amended by Chapter 505 of the Laws of 1907, and Chapter 520 of the Laws of 1908, it is provided as follows:

"SEC. 30. Commissioner of Labor.—There shall continue to be a department of labor, the head of which shall be the commissioner of labor. * * * Wherever the title of factory inspector is used in Article One of this Chapter * * * it shall be construed to mean the commissioner of labor. * * *"

12 Eight. Under the date of October 14th, 1908, the defendant as such Commissioner, aforesaid, addressed and mailed

and caused to be delivered in due course to plaintiff a letter stating, among other things, the following:

"Section 10 of Article 1 of the Labor Law, as amended by Chapter 442, Laws of 1908, relates to the payment of wages to employees. This Section in its amended form provides that a railroad corporation shall pay the wages due to its employees semi-monthly and Section 21 of said Article imposes upon the Commissioner of Labor the duty of enforcing the requirements of this law.

"A severe penalty is provided for each violation. If you will examine Section 11 of Article 1 of the Labor Law, you will find that for every violation there is provided a civil penalty of fifty dollars ($50), and inasmuch as a failure to pay the wages of each employee in accordance with the new law would constitute a separate and distinct violation, it will be seen that in the case of each corporation which is guilty of a violation the aggregate penalties will equal the total number of employees multiplied by fifty; in other words, a railroad corporation employing five thousand men, failing to comply with the law, would be liable to an aggregate penalty of two hundred fifty thousand dollars ($250,000) for each time it failed to observe strictly the requirements of Section 10 as amended.

"I sincerely hope that the occasion will not arise for me as Commissioner of Labor to exercise the authority conferred upon me in Section 11 to sue to recover penalties for failure by rail-
13 road corporations to comply with the provisions of the statute herein discussed; but I beg to assure you that I shall not hesitate to perform my full duty in the premises;"

and plaintiff, upon information and belief, alleges that the said defendant intends to, and unless in that behalf restrained by order of the Court to be rendered herein, will serve the notices and institute actions for penalties in respect of each and every employee of plaintiff performing service for it in whole or in part within this State, whom plaintiff shall at any time or from time to time have failed to pay in conformity with the provisions of said Section 10 as amended.

Ninth. Plaintiff further alleges that the aforesaid enactment, upon its face, applies to and purports to prescribe the time of payment of wages to plaintiff's employees who are engaged wholly or partially in the movement of interstate commerce, to its employees who are not residents of the State of New York, but who perform a part only of their service within this State, and whose contracts of employment were made in other States, to employees who are residents of the State of New York but whose contracts of employment were made therein or in other States, and a very substantial part of whose services are rendered in States other than New York, and that it is the intent and purpose of the defendant to serve notices and bring suits under and by virtue of such enactment for each and every failure of the plaintiff to pay each and every of said employees as provided in said enactment; that the employees of the plaintiff in and about their said employment, entirely or in part within the State of New York, are distributed over more than one thousand

eight hundred and nin-teen (1,819) miles, as aforesaid,
14 maintained and operated by the plaintiff, and that the making of payment in money of their said wages semi-monthly, as distinguished from monthly, will impose upon and subject plaintiff to an increased cost and expense of several thousand dollars each month; that the monthly pay-rolls of plaintiff's said employees aggregate many hundred thousand dollars; that a large proportion of said employees are trainmen, who, at different times, are at different places upon the line of plaintiff's railroad, engaged in the movement of trains and wholly inaccessible, although not absent from their regular place of labor; that an actual tender to each employee of the wages earned by him, or the actual payment in money of all wages of employees within fifteen days after the earning thereof by this plaintiff is practically impossible, and that the compulsion of said payment or tender, alternative to the drastic and enormous penalties as aforesaid prescribed is not compatible with the imperative duty and obligation of plaintiff to maintain the continuity and efficiency of its respective intra-state and interstate service of transportation of persons and property, and its transportation of the United States mail; that the penalties imposed by Section 11 of said Labor Law are, by reason of their necessarily aggregate character and effect, so excessive as to evidence legislative intent to unduly limit or prevent judicial inquiry as to the validity of said Section 10 at the instance of this plaintiff, or of any party effected thereby, and so to burden the challenge of its validity in the courts as to practically constrain this plaintiff, or any party effected thereby, to submit to and comply with its requirements, however invalid the same might appear to be, rather than by contesting its con-
15 stitutional validity, to take the chances of the penalties it imposes. Therein and thereby the said enactment deprives this plaintiff of property without due process of law.

Eleventh. Upon information and belief, that the said enactment on its face contains and presents no reason or warrant for the said defendant as such Commissioner giving to or serving upon plaintiff any such notice as provided for in, or any notice under authority or supposed authority of said Section 11, or of harassing plaintiff with or in or by the institution or prosecution of action or actions for penalties as intended and threatened by him as aforementioned.

Twelfth. Plaintiff further alleges that said statute, by its terms, deprives the plaintiff, in actions that may be brought against it to recover penalties, from setting up as a defense the contracts existing between the plaintiff and its employees for the payment of their wages once in each month; deprives the plaintiff of its right to set up as a defense the fact that said statute, when applied to the plaintiff, violates the several provisions of the Constitution of the State of New York and of the United States hereinafter named, in the respects hereinafter stated, and deprives the plaintiff of the right to set up other valid defenses to such actions and thereby said statute is repugnant to Article Third of the Constitution of the United States and to Article Six of the Constitution of the State of New York, in that it is an invasion by the legislative of the judicial power,

and is also repugnant to Section One of Article Fourteen of the Constitution of the United States and Section Six of Article One of the Constitution of the State of New York, in that it deprives the plaintiff of property without due process of law, and is repugnant
16 to Sub-division One of Section Ten of Article One of the Constitution of the United States, in that it is a law impairing the obligation of contracts; that in so far as the said enactment pu-ports to subject this plaintiff to the notice or notices, and thereupon to the action or actions for penalty or penalties for and in respect of any failure on its part to pay any wages due to its employee or employees within the time or times in and by said enactment mentioned, and in so far as said enactment is applied to this plaintiff, the said enactments are repugnant to and violate the Fourteenth Amendment to the Constitution of the United States and Section Six of Article One of the Constitution of the State of New York, in that it deprives the plaintiff of its property and property rights without due process of law; deprives plaintiff of the equal protection of the laws, in that they subject a person or corporation operating a steam surface railroad to burdens not imposed upon persons who do not carry on the business of a corporation or joint stock association, but whose employees are in all respects upon a parity with employees of corporations engaged in operating steam surface railroads, in respect to their need of and right to receive their wages semi-monthly; and further, in that their provisions apply in favor of employees upon steam surface railroads, but not in favor of employees of persons described in the preceding sentence, and are an unconstitutional, illogical and arbitrary classification; and further, in that they deprive plaintiff, and those with whom it desires to contract for employment in its service, of its and their right to liberty and to freedom of contract for and in respect of such employment. Said enactments and their enforcement against the plaintiff inter-
17 fere, with and impair plaintiff's performance and discharge of its duties and obligations of and as a common carrier of persons and property in the transportation thereof between points in the various States and between these and those in adjacent foreign dominion conformable and obedient to regulations in due course prescribed and promulgated by the Congress and other lawful authorities of the United States under and in pursuance of the Commerce Clause of the Federal Constitution, and interfere with plaintiff's duty and obligation to carry the mails of the United States under and in pursuance of contracts with and regulations prescribed by the lawful representatives, department and agencies of the United States, and particularly violates the provisions of the Constitution of the United States which commit to Congress the sole power to regulate commerce between the States. That said enactments are wholly illegal, unenforceable and void, in that as applied to this plaintiff they violate the rights guaranteed to the plaintiff in and by Section- Two (2), Five (5) and Six (6) of Article One and Section One (1), of Article Six of the Contsitution of this State, and in that they violate Section One (1) of Article Fourteen (14) and Section Ten (10) of Article One (1) and Article Ten (10) and Section Eight (8) of Article One (1) of the Constitution of the

United States, and such enactments are further void in that they are not a reasonable or proper valid exercise of the police power and further void as regulating the time of payment of wages of employees engaged wholly in maritime service upon the navigable waters of the United States as to the regulation of the time of the payment of whose wages the Congress of the United States has exclusive jurisdiction.

Thirteenth. Plaintiff further alleges that it is the purpose
18 and intent of the defendant, to and that defendant, will, give notice to the plaintiff, as provided in said enactment, for the purpose of subjecting the plaintiff to enormous penalties, amounting in the aggregate to a very large amount, and to bring, and that defendant will bring against plaintiff, a great multiplicity of suits to recover penalties for alleged failures of the plaintiff to pay wages to its employees within the time provided in said enactment, thereby to subject the plaintiff to great cost and expense and to impose upon the plaintiff liability for a very great amount without the right upon the part of the plaintiff to resort to or avail itself of the usual and ordinary process of defense essential to the maintenance of the plaintiff's rights. That unless the defendant be restrained as hereinafter prayed the plaintiff will sustain great and irreparable injury, that plaintiff has no adequate remedy at law.

Wherefore, the plaintiff prays that the said defendant be restrained and enjoined during the pendency of this suit from giving to plaintiff any notice under or in pursuance of the said Section 11 of the said enactment, and from instituting against the plaintiff any action or proceeding for the recovery of any penalty or penalties as therein prescribed, and that on final hearing hereof the said injunction be made perpetual, or that a permanent injunction be issued so restraining the defendant, and for such other and further relief and decree as equity in the premises may require.

GEORGE F. BROWNELL,
Attorney for the Plaintiff.

Office and Post Office Address, 50 Church Street, New York City, N. Y.

19 STATE OF NEW YORK,
County of New York, ss:

David Bosman, being duly sworn, says he is the Secretary of the Erie Railroad Company, plaintiff in the above entitled action; that the foregoing complaint is true to his knowledge except as to the matters therein stated to be alleged upon *the* information and belief, and as to those matters he believes it to be true.

DAVID BOSMAN.

Subscribed and sworn to before me this fifth day of November, 1908.

[SEAL.] H. MURRAY ANDREWS,
Notary Public, Kings County.

Certificate filed New York County.

Amended Answer.

Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

The defendant above named by Edward R. O'Malley, At-
20 torney-General of the State of New York, for an amended answer to the complaint of the plaintiff herein, alleges upon information and belief as follows:

I. Said defendant admits the allegations contained in plaintiff's complaint, in paragraphs or subdivisions designated II and VII.

II. Said defendant denies each and every allegation contained in paragraphs or subdivisions of said complaint designated XI.

III. Answering the allegations contained in paragraph or subdivision VIII of said complaint, said defendant admits that he has caused the letters therein set forth to be addressed and mailed under his direction, but defendant denies that he intends to, and, unless restrained by order of the Court herein, will serve any notices or institute any actions for penalties in respect to violations of former Article I, now Article II of the Labor Law of the State of New York, except such as may be necessary to recover such penalties as may be or have been incurred by the plaintiff for violations of said Article.

IV. Answering the allegations contained in Paragraph or Subdivision Ninth of said complaint, said defendant admits that the said enactment upon its face is as set forth in paragraph or subdivision of said complaint, designated Seventh.

V. Answering the allegations contained in paragraph or subdivision of said complaint, designated Twelfth, said defendant admits that the statute, by its terms, is as set forth in paragraph or subdivision of said complaint, designated Seventh.

Said defendant denies each and every other allegation in said Paragraph or Subdivision Twelfth contained.

21 VI. Answering the allegations contained in paragraph or subdivision of said complaint, designated Thirteenth, said defendant denies that it is his purpose or intent to or that he will give notices to the plaintiff, as provided in said enactment for the purpose of subjection the plaintiff to any more or greater penalties than plaintiff shall have incurred by reason of violation of said former Article I now Article II of said Labor Law, or that he will bring against plaintiff any more suits to recover penalties for failure of the plaintiff to pay wages to its employees than are necessary to recover the penalties incurred or to be incurred by the plaintiff by such violations.

Said defendant denies each and every other allegation contained in said Paragraph or Subdivision Thirteenth.

VII. Said defendant denies that he has any knowledge or information sufficient to form a belief regarding the truth of each and

every allegation in said complaint contained not hereinbefore more specifically admitted or denied.

EDWARD R. O'MALLEY,
Attorney-General of the State of New York.

Office and Post Office Address, Capitol, Albany, N. Y.

STATE OF NEW YORK,
County of Albany, ss:

John Williams, as Commissioner of Labor of the State of New York, being duly sworn, says that he is the defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own
22 knowledge except as to those matters stated to be alleged upon information and belief and that as to those matters he believes it to be true.

JOHN WILLIAMS.

Sworn to before me this 19th day of April, 1909.

M. M. THOMAS,
Notary Public in and for Albany Co.

Decision, Findings and Conclusions of Law.

Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

The above entitled action having duly come on for hearing before me and the evidence and the arguments of the respective parties having been duly presented and considered and due deliberation having been had thereon, I do hereby make my formal decision as follows, to wit:

Findings of Fact.

I do hereby find the following facts:

1. This action was started on November 5, 1908, by the
23 service of a summons and complaint upon the defendant.

II. That the defendant, John Williams, was then and has since at all times continued to be and still is the duly appointed, qualified and acting Commissioner of Labor of the State of New York.

III. That at the time of the commencement of this action the Labor Law of the State of New York provided in part as follows:

"SECTION 2. Definitions.—The term employee, when used in this chapter, means a mechanic, workingman or laborer who works for another for hire."

"SECTION 9. Cash payment of wages.—Every manufacturing, mining, quarrying, mercantile, railroad, street, railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or any municipal corporation thereof, either as a contractor or subcontractor therewith, shall pay to each employee engaged in his, their or its business, the wages earned by such employee in cash. No such company, person, firm or corporation shall hereafter pay such employees in script, commonly known as store money-orders. * * *"

"SECTION 10. When wages are to be paid.—Every corporation or joint-stock association, or person carrying on business thereof by lease or otherwise, shall pay weekly to each employee the wages earned by him to a day not more than six days prior to the
24 date of such payment. But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employees thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding calendar month. (As amended by L. 1908, ch. 442; last clause in force Oct. 1, 1908.)"

"SECTION 11. Penalty for violation of preceding sections.—If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of an employee, as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the factory inspector in his name of office in a civil action; but an action shall not be maintained therefor, unless the factory inspector shall have given to the employer at least ten days' written notice, that such an action will be brought if the wages due are not sooner paid as provided in this article.

On the trial of such action, such corporation or association shall not be allowed to set up any defense, other than a valid assignment of such wages, a valid set-off against the same, or the absence of such employee from his regular place of labor at the time of the payment, or an actual tender to such employee at the time of the payment of the wages so earned by him, or a breach of contract by such employee or a denial of the employment."

25 "SECTION 30. Commissioner of Labor.—* * * Wherever the title of factory inspector is used in article one of this chapter or the title of commissioner of labor statistics in article four thereof it shall be construed to mean the commissioner of labor."

IV. That said sections were all re-enacted, in substance, in the Consolidated Labor Law, which took effect February 17, 1909, with the modifications that section 9 became section 10; section 10 became section 11 and section 11 became section 12 of said Consolidated Labor Law.

V. That by a law passed in 1909, taking effect before the trial of this action, on the 17th day of April, 1909, and being Chapter

206 of the Laws of 1909, section 12 of the Consolidated Labor Law was amended so as to read as follows:

"SECTION 12. Penalty for violation of preceding section.—If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of all its employees, as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the commissioner of labor in his name of office in a civil action."

VI. That the facts contained in the Stipulation of Facts entered into between the respective parties for the purpose of this action, are hereby incorporated in this decision by reference and found by me.

VII. That no contracts have been shown between the plaintiff and any of its employees, entered into prior to May 20, 1908, and containing a definite term of employment under which the plain-
26 tiff agrees to pay its employees monthly or at any other definite intervals.

VIII. That Sections 10, 11 and 12 of the Consolidated Labor Law requiring payment of wages of employees of corporations in cash twice a month, tend to secure to those employees the full value or purchasing power of their wages.

IX. That the Legislature, when it enacted these laws, had reasonable ground to believe that they would directly tend to better the economic, physical and mental condition of these employees.

X. That under present economic conditions, the laboring man is naturally at a disadvantage in negotiating his employment contract with corporations, owing to the vast number of men from whom the corporations may select their employees.

XI. That if the employees of corporations are paid at infrequent intervals, they are compelled to resort more often to borrowing or to credit for the necessities of life.

XII. That if the employees of corporations are paid less frequently they do not receive as much purchasing power in their wages.

XIII. That if the employees of corporations are paid less frequently they are in greater danger of falling into the mental and moral degradation resulting from a continual condition of indebtedness.

XIV. That payment of employees of corporations more frequently tends, in a measure, to prevent friction between employee and employer and thus to prevent industrial disturbance and to promote the peace and prosperity of the whole community.

XV. That payment of corporation employees more fre-
27 quently benefits the large class of retail business men who supply them with the necessities of life by enabling them to conduct their business on a less extensive credit basis and thus lessens the danger of failures caused by curtailment of capital under the credit system.

XVI. That the Legislature, when it passed these laws, was justified as reasonable men in believing that under an unregulated system permitting corporations to pay employees when and as they would, such employees were deprived of the full purchasing power of their wages in fact and were frequently placed in financial, mental and

moral subjection because of the necessity of *restoring* to credit or borrowing to obtain the necessaries of life.

XVII. That there is nothing unreasonable in the law compelling corporations to pay their employees in cash.

XVIII. That there is nothing unreasonable in the law compelling the plaintiff to pay its employees in cash.

XIX. That there is nothing detrimental to the plaintiff in the law compelling corporations, except railway, corporations to pay their employees weekly.

XX. That there is nothing unreasonable in compelling railway corporations to pay their employees semi-monthly as provided in the statute.

XXI. That there is nothing unreasonable in compelling plaintiff to pay its employees semi-monthly as provided in the statute.

XXII. That the distinction made by the statute between corporations and individuals is not an unreasonable classification.

28 XXIII. That the distinction made by the statute between employees as defined in the statute and the other paid agents or servants of corporations is not an unreasonable classification.

XXIV. That corporation employers are compelled to make their employment contracts through agents in all instances and therefore the personal relations between employer and employed is less easy of establishment.

XXV. That a great majority of the large business enterprises in the State today are conducted by corporations.

XXVI. That railway employees are, as a rule, frugal and in the majority of cases have families dependent upon them for support.

XXVII. That the statutes compelling payment of wages of corporation employees in cash and at more frequent intervals than would exist without such statutes, benefit not only these employees, as above set forth, but benefit also their families and thus a large class in the community.

XXVIII. That said statutes are reasonable and tend directly to protect the public morals, welfare and prosperity.

XXIX. That said statutes do not deprive the plaintiff of vested rights.

XXX. That said statutes do not constitute a regulation of interstate commerce.

XXXI. That said statutes do not interfere with the obligation or duties of the plaintiff towards the public or in regard to the transportation of the United States mails.

XXXII. That said statutes do not deprive the employees of the plaintiff of freedom of contract.

29 *Conclusions of Law.*

I do further make and decide the following conclusions of law:

I. That Sections 10, 11 and 12 of the Consolidated Labor Law, as amended in 1909, are a proper and reasonable exercise of the police power of the State.

II. That Sections 10, 11 and 12 of the Consolidated Labor Law,

as amended in 1909, are a proper and reasonable exercise by the State of its reserved power to amend corporate charters.

III. That Sections 10, 11 and 12 of the Consolidated Labor Law, as amended in 1909, do not deprive the plaintiff of liberty or property without due process of law.

IV. That Sections 10, 11 and 12 of the Consolidated Labor Law, as amended in 1909, do not deprive the plaintiff's employees of liberty or property without due process of law.

V. That Sections 10, 11 and 12 of the Consolidated Labor Law, as amended in 1909, do not deprive the plaintiff or its employees of the equal protection of the law.

VI. That Sections 10, 11 and 12 of the Consolidated Labor Law, as amended in 1909, do not constitute a regulation of or interference with interstate commerce.

VII. That Sections 10, 11 and 12 of the Consolidated Labor Law, as amended in 1909, do not interfere with or prevent the proper performance by the plaintiff of its obligations and duties as a common carrier in respect to the public or to the transportation of the United States mail.

VIII. That the plaintiff in this action is not entitled to any relief.

Let judgment be entered in accordance with the foregoing
30 decision, dismissing the complaint of the plaintiff herein with costs.

JAMES A. BETTS, *J. S. C.*

Dated, July 28, 1909.

Plaintiff's Requests to Find Facts and Conclusions of Law, as Marked "Found" or "Refused" by Justice Betts.

New York Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
vs.
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

The plaintiff's attorney herewith submits to the Court, in writing, a statement of the facts which he deems established by the evidence in the above-entitled action, and of the ruling upon questions of law which he desires the Court to make, which statement is in the form of distinct propositions of law, or of fact, or both, separately stated and numbered, and defendant's attorney hereby requests the Court to find each proposition separately. Said requests to find are hereto attached.

Dated, this 30th day of April, 1909.

Respectfully submitted,

GEO. F. BROWNELL,
Plaintiff's Attorney.

50 Church Sreet, Borough of Manhattan, New York City.

31 *Findings of Fact.*

I. This action was started on November 5, 1908, by the service of a summons and complaint upon the defendant.

Found—J. A. B.

II. That the defendant, John Williams, was then and has since at all times continued to be and still is the duly appointed, qualified and acting Commissioner of Labor of the State of New York.

Found—J. A. B.

III. That at the time of the commencement of this action the Labor Law of the State of New York provided in part as follows:

"SEC. 2. Definitions.—The term employee, when used in this chapter, means a mechanic, workingman or laborer who works for another for hire."

"SEC. 4. Violations of the Labor Law.—Any officer, agent or employee of this state or of a municipal corporation therein having a duty to act in the premises, who violates, evades or knowingly permits the violation or evasion of any of the provisions of this act shall be guilty of malfeasance in office and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee, otherwise by the Governor."

"SEC. 9. Cash Payment of Wages.—Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice and every water company, not municipal, and every person, firm or corpora-
32 tion, engaged in or upon any public work for the state or any municipal corporation thereof, either as a contractor or a subcontractor therewith, shall pay to each employee engaged in his, their or its business the wages earned by such employee in cash. No such company, person, firm or corporation shall hereafter pay such employee in script, commonly known as store Money-orders. * * *"

SEC. 10. When Wages are to be Paid.—Every corporation or joint-stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employee the wages earned by him to a day not more than six days prior to the date of such payment. But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employees thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding calendar month. (As amended by L. 1908, ch. 442, last clause in force Oct. 1, 1908.)"

"SEC. 11. Penalty for Violation of Preceding Sections.—If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail, to pay the wages of an employee, as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the factory inspector in his name of office in a civil action; but

an action shall not be maintained therefor, unless the factory
33 inspector shall have given to the employer at least ten days' written notice, that such an action will be brought if the wages due are not sooner paid as provided in this article.

On the trial of such action, such corporation or association shall not be allowed to set up any defense, other than a valid assignment of such wages, a valid set-off against the same, or the absence of such employee from his regular place of labor at the time of the payment, or an actual tender to such employee at the time of the payment of the wages so earned by him, or a breach of contract by such employee or a denial of the employment.

Section 21 provided, in part as follows:

"The factory inspector shall enforce all the provisions of this article * * *";

"SEC. 30. Commissioner of Labor.—There shall continue to be a department of labor, the head of which shall be the commissioner of labor * * * wherever the title of factory inspector is used in Article One of this Chapter * * * it shall be construed to mean the commissioner of labor." * * *

Found—J. A. B.

IV. That said sections were all re-enacted, in substance, in the Consolidated Labor Law, which took effect February 17, 1909, with the modifications that Sec. 9 became Sec. 10; Sec. 10 became Sec. 11; Sec. 11 became Sec. 12, and Sec. 30 became Sec. 40 of said Consolidated Labor Law.

Found—J. A. B.

34 V. That by a law passed in 1909, taking effect before the trial of this action, on the 17th day of April, 1909, and being Ch. 206 of the L. of 1909, Sec. 12 of the Consolidated Labor Law was amended so as to read as follows:

SEC. 12. Penalty for violation of preceding section.—If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of all its employees, as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the commissioner of labor in his name of office in a civil action."

Found—J. A. B.

VI. That the facts contained in the stipulation of facts entered into between the respective parties for the purpose of this action are hereby incorporated in this decision by reference and found by me.

Found—J. A. B.

VII. The following statement is a classification of the employees of the plaintiff, Erie Railroad Company, and shows the number of days worked, total compensation and average compensation per day as per payrolls for year ending June 30th, 1908; there has been no material or substantial change in the matters therein referred to since the fiscal year ending June 30th, 1908, and said statement is fairly descriptive of the conditions therein referred to as they now exist.

Found—J. A. B.

PLAINTIFF'S EXHIBIT B.

Erie Railroad Company.

Chicago & Erie Railroad Company.

Classification of Employees: Showing Number of Days Worked, Total Compensation, and Average Compensation per Day.

As per Pay Rolls Year Ending June 30th, 1908.

Number.	Classification.	Employed as—	System. Total number of days worked.	System. Total compensation.	System. Average compensation per day.
1.	Clerks	Division Superintendent's Office	53,382	111,789.27	2.09
2.	Clerks	Division Engineer's Office	10,833	21,556.64	1.99
3.	Trainmasters	Passenger	2,069	10,095.50	4.88
4.	Trainmasters	Freight	946	4,359.50	4.61
4½.	Trainmasters	Freight and Passenger	3,475	15,700.92	4.52
5.	Train Despatchers		37,044	139,846.34	3.78
6.	Passenger Agents		17,033	35,700.86	2.10
7.	Freight Agents		20,905	72,925.66	3.49
8.	Freight and Passenger Agents		74,528	132,435.82	1.78
9.	Agents and Operators		83,056	138,449.64	1.67
10.	Clerks and Operators	Station	52,286	82,160.74	1.57
11.	Clerks	Passenger Station	20,841	37,860.38	1.82
12.	Clerks	Freight Station	340,505	601,026.46	1.77
13.	Clerks	Freight and Passenger Station	44,374	61,447.61	1.38
14.	Baggagemen	Station	57,469	88,940.86	1.55
15.	Station Telegraph Operators		104,118	187,114.45	1.80
16.	Other Telegraph Operators		212,317	368,196.99	1.73
17.	Outside Telegraph Employees	Repairmen	8,441	6,931.91	.82
18.	Laborers at Stations		161,454	207,004.75	1.28

19.	Warehousemen at Stations	715,707	1,205,298.16	1.68
20.	Other Station Employees	199,076	306,610.76	1.54
21.	Crossing Flagmen and Watchmen	157,332	172,535.05	1.10
21½.	Block & Int'l'k'g Signal'n not Operators	46,372	68,612.66	1.48
22.	Yardmasters	44,638	153,022.11	3.43
23.	Engineers—Yard	96,094	391,554.97	4.07
24.	Firemen—Yard	107,511	245,789.42	2.29
25.	Conductors—Yard	105,772	336,455.86	3.18
26.	Brakemen—Yard	261,996	723,208.67	2.76
27.	Yard Watchmen and Switch Tenders	57,797	94,825.84	1.64
28.	Roundhousemen	464,219	778,084.27	1.68
29.	Engineers—Freight Road	246,712	1,011,856.12	4.10
30.	Engineers—Passenger Road	105,019	392,574.53	3.74
31.	Firemen—Freight Road	254,893	635,450.35	2.49
32.	Firemen—Passenger Road	101,707	228,187.97	2.24
36				
33.	Conductors—Freight Road	193,011	635,215.06	3.29
34.	Conductors—Passenger Road	77,953	286,758.86	3.68
35.	Flagmen—Freight Road	.....	.....	....
36.	Flagmen—Passenger Road	23,959	52,138.31	2.18
37.	Brakemen—Freight Road	480,630	1,081,543.05	2.25
38.	Brakemen—Passenger Road	105,675	220,530.30	2.06
39.	Baggagemen—Train	38,817	83,206.97	2.14
40.	Baggagemen and Brakemen—Train	2,608	5,973.04	2.29
41.	Other Trainmen	4,220	6,120.45	1.45
42.	Civil Engineers	42,665	134,457.60	3.15
43.	Supervisors	13,284	42,428.31	3.19
44.	Clerks and Draughtsmen—Roadway	21,286	42,514.79	2.00
45.	Carpenters—Roadway	137,935	335,081.06	2.43
46.	Watchmen—Roadway	3,963	5,602.34	1.41

PLAINTIFF'S EXHIBIT B.—*Continued.*

Number.	Classification. Employed as—	System. Total number of days worked.	Total compensation.	Average compensation per day.
47.	Bricklayers and Masons	31,049	66,439.27	2.14
48.	Painters—Roadway	18,758	44,275.81	2.36
49.	Dock Builders	11,876	28,521.06	2.40
50.	Section Foremen	179,454	350,288.61	1.95
51.	Trackmen	1,183,204	1,634,033.86	1.38
52.	Other Roadway Employees	369,673	623,284.10	1.69
53.	Shop Clerks	91,290	146,391.94	1.60
54.	Storekeepers	6,441	15,851.65	2.46
55.	Foremen—Shops	123,256	344,196.70	2.79
56.	Machinists	335,607	971,326.23	2.89
57.	Blacksmiths	51,467	130,269.01	2.54
58.	Carpenters' Shops	117,086	264,699.60	2.27
59.	Boiler Makers	62,378	182,875.14	2.93
60.	Painters—Shops	22,501	55,265.05	2.46
61.	Car Builders	30,583	66,212.64	2.17
62.	Apprentices—Shops	126,802	188,830.84	1.49
63.	Laborers—Shops	308,688	426,791.95	1.38
64.	Other Shop Employees	847,943	1,541,881.91	1.82
65.	Car Repairers	390,676	610,251.01	1.56
66.	Car Inspectors	90,076	148,601.31	1.64
67.	Stationary Engineers and Pumpers	58,117	99,723.35	1.72
68.	Bridgemen	27,675	85,802.34	3.10
69.	Architects and Building Inspectors	8,886	22,971.51	2.59
	Total	9,909,413	20,048,316.07	2.02

37 VIII. A contract now exists and on the 20th day of May, 1908, did exist, between the plaintiff and substantially all of its employees severally, who were employed on and prior to May 20, 1908, to the effect that the wages or salary earned by such employee during the previous month should be paid on or before the 20th day of the succeeding month.

Refused—J. A. B.

IX. A considerable proportion of the plaintiff's employees consisting of enginemen, firemen, conductors, bagg-emen, trainmen and brakemen, are required in the performance of their duties to travel at regular intervals over long distances within and without the State of New York. During certain periods of the year, owing to weather and other conditions and conjestion of traffic, such employees engaged on freight trains, being there regular places of labor, are frequently and unavoidably delayed many days in completing their runs and returning to divisional points where their wages are paid. Instances arise, where, owing to such unavoidable delays or other circumstances, it is not possible to pay such employees their respective wages within the time specified in the labor law, as amended by Chapter 442 of the Laws of 1908.

Refused—J. A. B.

X. Section 1272 of Chapter Eighty-Eight of the laws of nineteen hundred and nine entitled "An Act providing for the punishment of crime, Constituting Chapter Forty of the Consolidated Laws," as amended by Chapter 205 of the Laws of 1909, which took effect April 17th, 1909, reads as follows:

"SEC. 1272. Payment of Wages.—A corporation or joint
38 stock association or person carrying on the business thereof, by lease or otherwise, who does not pay the wages of all its employees in accordance with the provisions of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than one hundred nor more than ten thousand dollars for each offense. An indictment of a person or corporation operating a steam surface railroad for an offense specified in this section may be found and tried in any county within the state in which such railroad ran at the time of such offense."

Found—J. A. B.

XI. Under date of October 14th, 1908, the defendant, as such Commissioner, aforesaid, addressed and mailed and caused to be delivered in due course to plaintiff a letter stating, among other things, the following.

"Section 10 of Article I of the Labor Law, as amended by Chapter 442, Laws of 1908, relates to the payment of wages to employees. This Section in its amended form provides that a railroad corporation shall pay the wages due to its employees semi-monthly and Section 21 of said Article imposes upon the Commissioner of Labor the duty of enforcing the requirements of this Law.

"A severe penalty is provided for each violation. If you will examine Section 11 of Article I of the Labor Law, you will find that for every violation there is provided a civil penalty of fifty ($50), and inasmuch as a failure to pay the wages of each employee in

accordance with the new law would constitute a separate and
39 distinct violation, it will be seen that in the case of each corporation which is guilty of a violation the aggregate penalties will equal the total number of employees multiplied by fifty; in other words, a railroad corporation employing five thousand men, failing to comply with the law, would be liable to an aggregate penalty of two hundred fifty thousand dollars ($250,000) for each time it failed to observe strictly the requirements of Section 10 as amended.

"I sincerely hope that the occasion will not arise for me as Commissioner of Labor to exercise the authority conferred upon me in Section 11 to sue to recover penalties for failure by railroad corporations to comply with the provisions of the statute herein discussed; but I beg to assure you that I shall not hesitate to perform my full duty in the premises."

Found—J. A. B.

XII. Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), and Section 2 of said Labor Law, deprive the plaintiff, Erie Railroad Company, of the right to make contracts with its employees who are mechanics, workingmen or laborers, as to when their wages shall be payable.

Refused—J. A. B.

XIII. Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), and Section 2 of said
40 Labor Law, deprive the employees of the plaintiff, Erie Railroad Company, who are mechanics, workingmen or laborers, of the right to make contracts as to when their wages shall be payable.

Refused—J. A. B.

XIV. Compliance with Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), will directly burden or impede the interstate traffic of Erie Railroad Company.

Refused—J. A. B.

XV. Compliance with Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), will impair the usefulness of Erie Railroad Company's facilities for interstate traffic.

Refused—J. A. B.

XVI. Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), are a regulation of the interstate commerce business of the Erie Railroad Company.

Refused—J. A. B.

XVII. Compliance with Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), will deprive the plaintiff, Erie Railroad Company of property.

Refused—J. A. B.

41 XVIII. Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Law of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), subject the plaintiff, a corporation operating a steam surface railroad, to burdens not imposed upon persons who do not carry on the business of a corporation or a joint stock association, but whose employees are upon a parity with employees of corporations engaged in operating steam surface railroads, in respect to their need of and right to receive their wages semi-monthly.

Refused—J. A. B.

XIX. The provisions of Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), apply in favor of employees of steam surface railroads, who are mechanics, workingmen or laborers, but not in favor of employees who are mechanics, workingmen or laborers employed by persons or firms who do not carry on the business of a corporation or a joint-stock association, but whose said employees are upon a parity with said employees of corporations engaged in operating steam surface railroads, in respect to their need of and right to receive their wages semi-monthly, and are an illogical *are* arbitrary classification.

Refused—J. A. B.

XX. The provisions of Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), apply

42 in favor of mechanics, workingmen and laborers who are in the employ of plaintiff but do not apply in favor of the employees of plaintiff who are not mechanics, workingmen or laborers, but who are on a parity with plaintiff's mechanics, workingmen and laborers, in respect to their need of and right to receive their wages semi-monthly, and are an illogical and arbitrary classification.

Refused—J. A. B.

XXI. Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442 of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), in so far as they require the payment of wages twice in each month are, as applied to Erie Railroad Company, unreasonable and impose upon it an unequal and oppressive burden.

Refused—J. A. B.

XXII. Section 10 of Chapter 32 of the General Laws of the State of New York, known as the Labor Law, as amended by Chapter 442

of the Laws of 1908 (being new Section 11), and Section 11 of said Labor Law (being new Section 12), and their enforcement against the plaintiff interfere and will interfere with and impair plaintiff's performance and discharge of its duties and obligations of and as a common carrier of persons and property in the transportation thereof between points in the various states and between these and those adjacent foreign dominion conformable and obedient to regulations in due course prescribed and promulgated by the Congress and other lawful authorities of the United States under and in pursuance of the Commerce Clause of the Federal Constitution.

Refused—J. A. B.

43 XXIII. The penalties imposed by said Section 11 of said Labor Law (being new Section 12), and by Section 1272 of Chapter 88 of the Laws of 1909, as amended by Chapter 205 of the Laws of 1909, are, by reason of their necessarily aggregate character and effect, so excessive as to evidence legislative intent to unduly limit or prevent judicial inquiry as to the validity of said Section 10 (new Section 11) at the instance of this plaintiff, and so to burden the challenge of its validity in the Courts as to practically constrain this plaintiff, or any party affected thereby, to submit to and *amply* with its requirements, however invalid the same might appear to be, rather than by contesting its constitutional validity, to take the chances of the penalties it imposes.

Refused—J. A. B.

XXIV. The payment of the wages of employees who are mechanics, workingmen or laborers, by Erie Railroad Company once a month as distinguished from twice a month is not inconsistent with the public interests or hurtful to the public order or detrimental to the common good.

Refused—J. A. B.

XXV. The public interest does not require the Erie Railroad Company to pay those of its employees who are mechanics, workingmen or laborers twice a month.

Refused—J. A. B.

XXVI. The ordinary and usual term of credit by retail dealers in the necessities of life is the period of thirty days or of the calendar month. In the ordinary and usual course of business retail dealers in the necessities of life render monthly bills or statements of account.

Refused—J. A. B.

44 XXVII. Whether the wages of its said employees be paid monthly or semi-monthly, in no wise affects plaintiff's obligation, duty or service to the public as a common carrier of passengers or property, nor have the periods of payment of plaintiff's said employees any relation to, connection with or effect upon the general welfare of the public, however the semi-monthly payment of the wages of its said employees may or may not tend to the betterment or advantage of the employees so paid.

Refused—J. A. B.

XXXVIII. It is impracticable for plaintiff in making up its payrolls and paying those of its employees who are mechanics, workingmen or laborers, to separate the services performed in New York

State from *from* the services performed in other states in the case of a large number of its said employees whose runs extend from points in New York to points in other states.

Refused—J. A. B.

XXIX. The wages of plaintiff's said employees engaged partly in plaintiff's interstate business and partly in plaintiff's intrastate business have never been and cannot practically be divided to determine, in the case of any such employee, the proportion of such wages actually earned in plaintiff's intrastate business.

Refused—J. A. B.

XXX. Unless the defendant be restrained from bringing suits against the plaintiff under Section 11 of the said Labor Law (being new Section 12), the plaintiff will sustain great and irreparable injury.

Refused—J. A. B.

XXXI. Plaintiff has no adequate remedy at law.

Refused—J. A. B.

45 *Conclusions of Law.*

I. That Section 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law, and Section 12 of said Labor Law as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void in that they, as so applied, are repugnant to and violate the rights guaranteed to the plaintiff in and by Section 6 of Article 1, of the Constitution of the State of New York, in that they deprive the plaintiff of property and property rights without due process of law.

Refused—J. A. B.

II. That Section 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law, and Section 12 of said Labor Law, as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void in that they as so applied, are repugnant to and violate the rights guaranteed to the plaintiff in and by Section 6 of Article 1 of the Constitution of the State of New York, in that they deprive the plaintiff of liberty without due process of law.

Refused—J. A. B.

III. That Section 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law, and Section 12 of said Labor Law as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void in that they, as so applied, are repugnant to and violate Section 1 of Article 14 of the Constitution of the United States, in that they deprive the plaintiff of property and property rights without due process of law.

Refused—J. A. B.

46 IV. That Section 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law, and Section 12 of said Labor Law, as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void in that they, as so applied, are repugnant to and violate Section 1 of Article 14 of the Constitution of the United

States, in that they deprive the plaintiff of liberty without due process of law.

Refused—J. A. B.

V. That Sections 2 and 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law and Section 12 of said Labor Law as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void in that they, as so applied, are repugnant to and violate Section 1 of Article 14 of the Constitution of the United States, in that they deprive the plaintiff of the equal protection of the Laws.

Refused—J. A. B.

VI. That Sections 2 and 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law and Section 12 of said Labor Law as amended by Chapter 206 of the Laws of 1909, as applied to the employees of the plaintiff, Erie Railroad Company, are void in that they, as so applied, are repugnant to and violate Section 1 of Article 14 of the Constitution of the United States, in that they deprive the employees of the plaintiff, Erie Railroad Company, who are not mechanics, workingmen or laborers of the equal protection of the laws.

Refused—J. A. B.

VII. That Section 11 of Chapter 31 of the Consolidated
47 Laws of the State of New York, known as the Labor Law, and Section 12 of said Labor Law, as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void in that they, as so applied, are repugnant to and violate Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, in that they impair the obligation of contracts.

Refused—J. A. B.

VIII. That Section 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law, and Section 12 of said Labor Law, as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void in that they, as so applied, are repugnant to and violate Subdivision 3 of Section 8 of Article 1 of the Constitution of the United States.

Refused—J. A. B.

IX. That Section 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law, and Section 12 of said Labor Law, as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void, in that they are not a reasonable or valid exercise of the police power.

Refused—J. A. B.

X. That Section 11 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law, and Section 12 of said Labor Law, as amended by Chapter 206 of the Laws of 1909, as applied to the plaintiff, Erie Railroad Company, are void as regulating the time of payment of wages of employees who are
mechanics, workingmen or laborers engaged wholly in
48 maritime service upon the navigable waters of the United States, as to the regulation of the time of the payment of

whose wages the Congress of the United States has exclusive jurisdiction.

Refused—J. A. B.

XI. That the plaintiff has no adequate remedy at law.

Refused—J. A. B.

XII. That the said defendant be perpetually restrained and enjoined from instituting against the plaintiff any action or proceeding for the recovery of any penalty or penalties prescribed in Section 12 of Chapter 31 of the Consolidated Laws of the State of New York, known as the Labor Law, as amended by Chapter 206 of the Laws of 1909, and that a permanent injunction be issued so restraining the defendant, and I hereby direct that judgment be entered accordingly with costs and disbursements to the plaintiff.

Refused—J. A. B.

49 *Judgment.*

Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

The issues in this Action having been regularly brought on for trial before Hon. James A. Betts, Justice of the Supreme Court, at a Trial Term of this Court, held at the Court House, in the City of Albany, N. Y., commencing on the 5th day of April, 1909, and the Court having on the 19th and the 20th days of April, 1909, heard the allegations and proofs of the parties and the argument of counsel and after due deliberation thereon having — made on the 28th day of July, 1909, its decision in writing containing findings of fact and conclusions of law and directing judgment in favor of the above named defendant dismissing the complaint of the plaintiff,

Now, on filing said decision, on motion of Edward R. O'Malley, Attorney-General, attorney for the defendant, it is

Ordered and adjudged that the complaint of the plaintiff herein be and the same hereby is dismissed. And it is further

50 Ordered and adjudged, that the defendant recover of the plaintiff the sum of $73.39, the costs of this action and that execution issue therefor.

Dated, July 28th, 1909.

JOHN FRANEY, *Clerk.*

PLAINTIFF'S EXCEPTIONS.

Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

Please take notice, that, the above-named plaintiff, Erie Railroad Company, hereby excepts to the decision of the Court herein, Mr. Justice James A. Betts, presiding, filed and entered in the office of the Clerk of the County of Albany on or about the 29th day of July, 1909, in the following particulars:

First. To the findings of fact numbered 8.
Second. To the findings of fact numbered 9.
Third. To the findings of fact numbered 10.
Fourth. To the findings of fact numbered 11.
Fifth. To the findings of fact numbered 12.
51 Sixth. To the findings of fact numbered 13.
Seventh. To the findings of fact numbered 14.
Eighth. To the findings of fact numbered 15.
Ninth. To the findings of fact numbered 16.
Tenth. To the findings of fact numbered 17.
Eleventh. To the findings of fact numbered 18.
Twelfth. To the findings of fact numbered 19.
Thirteenth. To the findings of fact numbered 20.
Fourteenth. To the findings of fact numbered 21.
Fifteenth. To the findings of fact numbered 22.
Sixteenth. To the findings of fact numbered 23.
Seventeenth. To the findings of fact numbered 24.
Eighteenth. To the findings of fact numbered 25.
Nineteenth. To the findings of fact numbered 26.
Twentieth. To the findings of fact numbered 27.
Twenty-first. To the findings of fact numbered 28.
Twenty-second. To the findings of fact numbered 29.
Twenty-third. To the findings of fact numbered 30.
Twenty-fourth. To the findings of fact numbered 31.
Twenty-fifth. To the findings of fact numbered 32.
52 Twenty-sixth. To the conclusion of law numbered 1.
Twenty-seventh. To the conclusions of law numbered 2.
Twenty-eighth. To the conclusion of law numbered 3.
Twenty-ninth. To the conclusion of law numbered 4.
Thirtieth. To the conclusion of law numbered 5.
Thirty-first. To the conclusion of law numbered 6.
Thirty-second. To the conclusion of law numbered 7.
Thirty-Third. To the conclusion of law numbered 8.
Thirty-third and one-half. To that part of decision allowing a judgment to be entered and dismissing complaint with costs.
Thirty-fourth. To the refusal of the Court to find as requested in Paragraph 8 under "findings of fact" of the request submitted by said plaintiff.

Thirty-fifth. To the refusal of the Court to find as requested in Paragraph 9 under "findings of fact" of the request submitted by said plaintiff.

Thirty-sixth. To the refusal of the Court to find as requested in Paragraph 12 under "findings of fact" of the request submitted by said plaintiff.

Thirty-seventh. To the refusal of the Court to find as requested in Paragraph 13 under "findings of fact" of the request submitted by said plaintiff.

53 Thirty-eighth. To the refusal of the Court to find as requested in Paragraph 14 under "findings of fact" of the request submitted by said plaintiff.

Thirty-ninth. To the refusal of the Court to find as requested in Paragraph 15 under "findings of fact" of the request submitted by said plaintiff.

Fortieth. To the refusal of the Court to find as requested in Paragraph 16 under "findings of fact" of the request submitted by said plaintiff.

Forty-first. To the refusal of the Court to find as requested in Paragraph 17 under "findings of fact" of the request submitted by said plaintiff.

Forty-second. To the refusal of the Court to find as requested in Paragraph 18 under "findings of fact" of the request submitted by said plaintiff.

Forty-third. To the refusal of the Court to find as requested in Paragraph 19 under "findings of fact" of the request submitted by said plaintiff.

Forty-fourth. To the refusal of the Court to find as requested in Paragraph 20 under "findings of fact" of the request submitted by said plaintiff.

Forty-fifth. To the refusal of the Court to find as requested in Paragraph 21 under "findings of fact" of the request submitted by said plaintiff.

Forty-sixth. To the refusal of the Court to find as requested in Paragraph 22 under "findings of fact" of the request submitted by said plaintiff.

Forty-seventh. To the refusal of the Court to find as requested in Paragraph 23 under "findings of fact" of the request submitted by said plaintiff.

Forty-eighth. To the refusal of the Court to find as requested in Paragraph 24 under "findings of fact" of the request submitted by said plaintiff.

54 Forty-ninth. To the refusal of the Court to find as requested in Paragraph 25 under "findings of fact" of the request submitted by said plaintiff.

Fiftieth. To the refusal of the Court to find as requested in Paragraph 26 under "findings of fact" of the request submitted by said plaintiff.

Fifty-first. To the refusal of the Court to find as requested in Paragraph 27 under "findings of fact" of the request submitted by said plaintiff.

Fifty-second. To the refusal of the Court to find as requested in

Paragraph 28 under "findings of fact" of the request submitted by said plaintiff.

Fifty-third. To the refusal of the Court to find as requested in Paragraph 29 under "findings of fact" of the request submitted by said plaintiff.

Fifty-fourth. To the refusal of the Court to find as requested in Paragraph 30 under "findings of fact" of the request submitted by said plaintiff.

Fifty-fifth. To the refusal of the Court to find as requested in Paragraph 31 under "findings of fact" of the request submitted by said plaintiff.

Fifty-sixth. To the refusal of the Court to find as requested in Paragraph First under "conclusion of law" of the request submitted by said plaintiff.

Fifty-seventh. To the refusal of the Court to find as requested in Paragraph Second under "conclusion of law" of the request submitted by said plaintiff.

Fifty-eighth. To the refusal of the Court to find as requested in Paragraph Third under "conclusion of law" of the request submitted by said plaintiff.

55 Fifty-ninth. To the refusal of the Court to find as requested in Paragraph Fourth under "conclusion of law" of the request submitted by said plaintiff.

Sixtieth. To the refusal of the Court to find as requested in Paragraph Fifth under "conclusion of law" of the request submitted by said plaintiff.

Sixty-first. To the refusal of the Court to find as requested in Paragraph Sixth under "conclusion of law" of the request submitted by said plaintiff.

Sixty-second. To the refusal of the Court to find as requested in Paragraph Seventh under "conclusion of law" of the request submitted by said plaintiff.

Sixty-third. To the refusal of the Court to find as requested in Paragraph Eighth under "conclusion of law" of the request submitted by said plaintiff.

Sixty-fourth. To the refusal of the Court to find as requested in Paragraph Ninth under "conclusion of law" of the request submitted by said plaintiff.

Sixty-fifth. To the refusal of the Court to find as requested in Paragraph Tenth under "conclusion of law" of the request submitted by said plaintiff.

Sixty-sixth. To the refusal of the Court to find as requested in Paragraph Eleventh under "conclusion of law" of the request submitted by said plaintiff.

Sixty-seventh. To the refusal of the Court to find as re-
56 quested in Paragraph Twelfth under "conclusion of law" of the request submitted by said plaintiff.

Dated, New York, N. Y., August —, 1909.

GEORGE F. BROWNELL,
Attorney for Plaintiff.

50 Church Street, New York City.

To the Clerk of the County of Albany, and Edward R. O'Malley, Attorney-General, Attorney for Defendant.

Case on Appeal.

New York Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff-Appellant,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant-Respondent.

The following contains all the evidence given on the trial of this action.

The issues in the above-entitled action came on to be tried before *John* James A. Betts, a Justice of the Supreme Court, sitting at Special Term, and without a jury, on the 19th and 20th days of April, 1909, at the City Hall in the City of Albany, N. Y.

57 Appearances:

George N. Orcutt, Esq., of Counsel for Plaintiff.

Hon. Edward R. O'Malley, Attorney-General, and Hon. Edward H. Letchworth, Second Deputy Attorney-General, of Counsel for Defendant.

The plaintiff's counsel offered in evidence a paper setting forth certain stipulated facts. The same was received in evidence, and is as follows:

Stipulated Facts.

Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
vs.
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

For the purpose of saving time upon the trial and for the clearer presentation of matters herein involved, the following facts are hereby stipulated with the same force and effect as though established by competent evidence introduced and received on the trial, the defendant, however, not conceding the materiality or competency of such facts, to wit;

First. Plaintiff is a domstic corporation created in Novem-
58 ber, 1895, existing by virtue of the laws of the State of New York, having all the power and rights conferred by the Railroad Law upon railroad corporations and subject to the duties and obligations lawfully imposed thereby, and authorized, among other things, to operate the various railroads, steamship lines, ferries and car-floats, forming what is hereinafter described as the Erie System.

Second. The plaintiff operates and maintains a railroad, the main line of which extends from Jersey City, in the State of New Jersey,

to Marion, in the State of Ohio. A branch known as the Northern Railroad of New Jersey extends from Jersey City, N. J., to Nyack, N. Y.; another branch, known as the Greenwood Lake Railroad, extends from Jersey City, N. J., to Greenwood Lake, N. Y.; another branch, known as the Newark Branch, extends from Jersey City, N. J., to Paterson, N. J., by way of Newark; a branch, known as the Bergen County Railroad, leaves the main line at Rutherford, N. J., and joins the main line at Ridgewood, N. J.; another branch, known as the Piermont Branch, extends from Suffern, N. Y., on the main line to Piermont, N. Y.; another branch extends from Newburgh Junction, N. Y., on the main line to Newburgh, N. Y.; another branch extends from Greycourt, N. Y., on the main line to Vails Gate Junction, N. Y.; two other branches extend from Goshen, N. Y., on the main line—one to Pine Island, N. Y., and the other to Montgomery, N. Y.; another branch extends from Middletown, N. Y., on the main line to Pine Bush, N. Y.; another branch extends from Lackawaxen, Pa., to Honesdale, Pa., with a branch thereof extending from West Hawley, Pa., to Scranton, Pa.; another branch extends from Susquehanna, Pa., to Carbondale, Pa.;
59 another branch extends from Elmira, N. Y., to Hoytville, Pa.; another branch extends from Painted Post, N. Y., to Attica, N. Y., by way of Avon, and another branch extends from Mt. Morris, N. Y., to Rochester, N. Y.; another branch extends from Hornell, N. Y., to Buffalo, N. Y.; and thence from Buffalo to Black Rock and Suspension Bridge; another branch extends from Buffalo to Jamestown, and another branch from Salamanca, N. Y., to Dunkirk, N. Y.; another branch extends from Carrollton, N. Y., to Johnsonburg, Pa.; another branch extends from Meadville, Pa., to Oil City, Pa.; another branch extends from Pymatuning, Pa., by way of Youngstown, Ohio, to Cleveland, Ohio; another branch extends from New Castle, Pa., to Sharon, or State Line, Pa., and another branch from Lisbon, Ohio, to Niles, Ohio.

Operated by due authority in the names of other railroad corporations but controlled by Erie Railroad Company by due authority, and forming with the lines hereinbefore mentioned what is known as the Erie System, are New Jersey and New York Railroad, extending from Jersey City to Haverstraw, N. Y., with a branch to New City, N. Y.; the New York, Susquehanna and Western Railroad extending from Jersey City, N. J., to a point near Wilkes-Barre, Pa., with a branch extending from Beaver Lake, N. J., to Middletown, N. Y. (erroneously shown upon Plaintiff's Exhibit "A" as extending from Sparta Junction, N. J.); Erie & Jersey Railroad extending from Guymard, N. Y., to Highland Mills, N. Y.; Bath and Hammondsport Railroad, extending from Bath, N. Y., to Hammondsport, N. Y.; Genesee River Railroad, extending from Hunts, N. Y., to Cuba, N. Y.; the Chicago and Erie Railroad, extending from Marion, Ohio, to Chicago, Ills.; and some other minor and subsidiary branches.

60 Among the ferries, steamboat lines and carfloats operated by or controlled by Erie Railroad Company and forming a part of Erie System, are the following.

Passenger and freight ferries crossing the Hudson River between

Jersey City and New York City; carfloats for the transportation of goods to and from Jersey City and points in New York City and Brooklyn; a line of barges and tug boats for the transportation of freight between Jersey City and Boston and intermediate points, and some other steamboat lines in the navigable waters in the vicinity of Jersey City; a line of passenger and freight steamers on Keuka Lake, N. Y.; a line of freight steamers between Buffalo and Lake Erie and ports on Lake Michigan.

The railroads hereinbefore described, lying east of Kent and Cleveland, Ohio, are correctly shown upon a map attached to this stipulation and forming a part thereof, marked Exhibit "A" and the tables showing the operating divisions thereof and the length of the parts of such operating—located in different States are correctly shown upon the tables attached to said map. The said railroads east of Kent extend into four different States. State lines are correctly shown upon Plaintiff's Exhibit "A."

The aforesaid railroad mileage, treated as a single track, is in excess of 2,500 miles. By connection with other steam surface railroads and steamship lines, transportation of passengers, mail, express and freight is accomplished over plaintiff's lines to all points in the United States reached by railroads and to many points in foreign countries.

Third. Pursuant to contracts with and regulations prescribed by the Government of the United States, plaintiff is, and for
61 many years has been, engaged in transporting over its systems of railroads, as designated mail routes, between points within and without the State of New York, and between points within and without the United States and foreign countries, United States mails.

Fourth. In conformity with tariffs duly promulgated and filed by the plaintiff under the laws of the State of New York, and in conformity with tariffs and concurrences in tariffs duly filed by the Interstate Commerce Commission of the United States, plaintiff, as such common carrier, is and for many years has been, engaged in transportation of passengers, express and freight, for charges comprising the whole of such transportation service, between points of origin and destination (1), within this State (2), within and without this State, (3), without the State, both over its own lines, and over its own lines and lines of connecting carriers.

Of the plaintiff's gross earnings less than ten per cent. is earned in domestic or intra-state commerce, or business within the State of New York. Much more than one-half of its earnings are derived from inter-state commerce.

Fifth. In the performance of the functions hereinbefore described, plaintiff has in its employ east of Kent, Ohio, more than 25,000 employees. Passenger trainmen run from Kent, Ohio, to Salamanca, N. Y., and some run between Cleveland, Ohio, and Salamanca, N. Y.

The Erie Railroad is operated by divisions. The new York Division extends from Jersey City, N. J., to Port Jervis, N. Y., and includes all of the branches and subsidiary companies east of Port Jervis, with the exception of the New York, Susquehanna and West-

ern Railroad, which constitutes a separate operating division; also excepting the Greenwood Lake branch which constitutes a
62 separate operating division, also excepting the Northern Railroad of New Jersey, which constitutes a separate operating division, and the New Jersey & New York Railroad which constitutes a separate operating division. The largest traffic and the largest number of employees are upon the New York Division, which is an interstate division. The Delaware Division extends from Port Jervis, N. Y., to Susquehanna, Pa., and is an interstate division. A branch from Lackawaxen, Pa., to Honesdale and Scranton, Pa., is operated as the Wyoming Division. The Susquehanna Division extends from Susquehanna, Pa., to Hornell, N. Y., and is an interstate division. The branch from Susquehanna to Carbondale, Pa., is operated as the Jefferson Division. The branch extending from Elmira, N. Y., to Hoytville, Pa., is operated as the Tioga Division, and is an interstate division. The branch from Painted Post to Attica by way of Avon, and the branch from Mt. Morris to Rochester, is operated as the Rochester Division, and is wholly within the State of New York. The branch from Hornell to Buffalo and Niagara Falls, and the branch from Buffalo to Jamestown, are operated as the Buffalo Division, and is wholly within the State of New York. The Allegheny Division extends from Hornell, N. Y., through Salamanca, N. Y., to Dunkirk, N. Y., and is wholly within the State of New York. The branch extending from Carrollton, in the State of New York, to Johnsonburg, in the State of Pennsylvania, is operated as the Bradford Division, and is an interstate division. The Meadville Division extends from Salamanca, N. Y., through Pennsylvania to Kent, Ohio, and is an interstate division.

Every division on the main line from Kent to Jersey City is located partly within the State of New York and partly
63 within other States, with the exception of the Allegheny Division, and many of the branch divisions are interstate as above shown.

The total mileage east of Kent, Ohio, is about 2,000 miles.

Nearly *of* all of the said employees are engaged in the transportation of interstate commerce.

The number of employees in work on the Erie system averages about 35,000 and the pay roll averages about $21,000,000 a year.

As a rule, trains run over an operating division without change of employees. As a rule employees working upon a division are employed at one of the terminals of such division where the division offices are located. Many of such division offices are located without the State of New York. Plaintiff's employees are divided into five classes: (1) those who reside in New York and whose contract of employment is made in New York and whose work is wholly within the State of New York; (2) those who reside in New York, whose contract of employment is made in the State of New York and whose work is performed partly within the State of New York and partly in other States; (3) those who reside in States other than New York, whose contract of employment is made in States other than New York and whose work is exclusively in States other than

New York; (4) those who reside in States other than New York, whose contract of employment is made in other States than New York, and whose services are performed partly within the State of New York and partly in other States; (5) those employed in the Marine Department whose services are rendered upon the navigable waters of the United States.

The majority of the 25,000 employees referred to as working east of Kent, render services partly in New York and partly in other States. It is the rule of the plaintiff to retain in its service
64 employees who perform their duties acceptably and not to discharge them unless in the judgment of the discharging officer there is just cause therefor. A great majority of the Plaintiff's employees have been in its service many years.

Sixth. Substantially all of the persons employed on and prior to the 20th day of May, 1908, are still in the plaintiff's employ and are and were employed with full knowledge of the fixed rules and regulations of the plaintiff to pay such employees, respectively, on or before the 20th day of each month the wages or salary due them for the previous month.

Seventh. The following is the method of the Erie Railroad Company and affiliated companies in the recording of time, the preparation of pay rolls and the monthly settlement for services performed by employees, and is the best method known to its expert accountants and treasury officers.

Maintenance of Way and Engineering Department.—The initial entry in the record of service performed by employees of this department is made by the foreman of each gang in a pocket memorandum book, which shows the employee's name and the number of hours of service each day and the kind of work performed, in order that the proper distribution of the expense may be reported. This book is merely a memorandum record and the information is copied daily into the permanent monthly time record by each section foreman.

In addition to the information shown in the memorandum record the permanent monthly record shows the rate of wages and at the close of the month the total amount earned by each member of a gang. On this record is shown for the use of the division officer in reporting the expense, a description of the work performed
65 by each gang each day. These monthly sheets after having received the certification of the section foreman, are sent to the Division Engineer through the office of the Track Supervisor. The various rates, extensions, calculations, etc., are verified in the office of the Division Engineer and the record is then transferred to the pay roll, each sheet of which receives the *the* certification of the Division Engineer and the Division Superintendent. A recapitulation of the several pay rolls covering the various gangs of the division is made, on which is written the approval of the Division Engineer, Division Superintendent, Engineer Maintenance of Way, General Superintendent and General Manager.

Mechanical Department.—The employees of the Mechanical Department, whether at shops, engine houses or outlaying points, furnish daily slips showing their service when employed at hourly

daily or monthly rates. The information given on these slips is the number of hours of service and description of the work done in order to insure a correct distribution of each expense. When engaged on "piece work" a daily slip is also furnished, but it merely states that they are so employed.

These slips after having received the certification of foreman, go to the timekeeper and are the basis of the entries on the permanent monthly record for men engaged at other than "piece work" rates, and in this same record credit is shown to employees engaged on "piece work" for the amounts due them as each job is completed (full information of which is obtained from a "piece work" operation card furnished by the inspector, which shows operation performed, allowance for same, and for the information of the officials it also gives the number of hours occupied by the employee in performing the operation), except at the close of each month
66 in order that an employee shall receive a proportionate amount of what he earned during that month, an estimate of the proportionate amount due him for an unfinished job is allowed to him, the balance adjusted in the following month when the work has been fully completed.

The calculations on this record are all computed monthly and from this record entries are made on the pay roll sheets, each of which receives the certification of the Storekeeper, and Master Mechanic or Foreman of Car Repairs. The summary of the entire monthly pay rolls of each shop is certified to by the Storekeeper and Master Mechanic and signatures are made thereon showing approvals of the Mechanical Superintendent, General Mechanical Superintendent and General Manager.

Transportation Department.—The employees of this department may be classified under the following heads:

Engine Service.—At the close of each run when in road service, or at the close of each day when in yard service, a time slip is prepared by the engineer, showing the number of hours or miles of service performed by himself and fireman. In the case of road service time slips receive the certification of a designated employee, which indicates that the time of arrival at destination is correctly stated, a verification of the time of starting train having been previously shown by the engine caller. In the case of engineers in yard service, their time slips receive the certification of the yardmaster. After having been so certified, engineer's and firemen's time slips are sent to the office of the Division Superintendent and are used as the basis for entries in the permanent monthly time record. In order that the expense may be properly distributed as between freight, passenger, switching and work service, it is
67 necessary that the time slips show the class of work performed by each employee, which information is inserted in the permanent record from which the distribution to expense accounts is taken when the monthly reports are prepared.

Train Service.—The original entry of the time of men engaged in train service is a time slip prepared by each conductor, showing the names of the different train employees; also, information as to the class of service, whether freight, passenger or work. These

trainmen's time slips receive the certification of the Yardmaster at terminals as to time of arrival, the information as to the time crews were called having been previously shown on the card by the train caller at starting point. Entries on the Superintendent's permanent monthly time record are made from the slips.

Yard Service.—A special from of time slip is used for the initial information regarding the time of yard conductors, switch-tenders and yard employees, which is prepared by the yard conductor and certified by the yardmaster. These slips show the names of the employees and the number of hours for which they are to receive pay. From these daily slips entry is made in the permanent monthly time record. The special from referred to is arranged to meet the requirements on account of separate rates applying to day and night service and must show all information necessary for the proper distribution of the expense.

Station Service.—We have in use a special form of time slip to cover miscellaneous employees at stations, which is prepared by the foreman of each gang and shows the number of hours of work performed by each employee. This slip is signed by the foreman and the information is transferred to the same form of permanent monthly record as we record the time of men in yard service. At a few of the larger stations where a large number of men are
68 engaged in yard and station service the entries are transformed from the record to the pay-roll sheets which is shown merely as a help-out to the Superintendent's force. These payroll sheets are then sent to the Division Superintendent together with a monthly station time record and the daily time slips, so that the same may be checked in the office of the Division Superintendent as to the correctness of rates, extensions, footings, etc. With the exception of these larger stations the entries on the monthly payroll sheets are made from the Superintendent's record of employees in engine, train, yard and station service, which records also contain the report of time of men at Division headquarters. These payroll sheets are signed by the Division Superintendent. The sheets recapitulated on a summary and on this summary are shown the signatures of the Division Superintendent, General Superintendent and General Manager.

The time slips of all engine and train men are checked with the sheets showing the movement of trains.

Telegraph Department.—The work of this department is principally in the repair of telegraph lines and the time records are substantially the same as the records in the Maintenance of Way Department.

Marine Department.—The captain of each boat prepares a daily report called a "log" and on this report is shown the names of employees of each vessel and the service performed. From this "log" entries are made in the permanent monthly time record in the office of the Superintendent of Marine Department, which is practically the same as the trainmen's time records heretofore described. A record of the time of shore employees, which is obtained from
69 daily time slips, is inserted in this same record and the information necessary for the preparation of payrolls and dis-

tribution of expense is obtained from this book. The payrolls are signed by the Superintendent of Marine Department and forwarded direct to the General Manager for his approval.

Commissary Department.—The recording and reporting of time of employees of this department is substantially the same as that of train employees, the permanent record being kept in the office of the Superintendent of Dining Cars, who signs the payrolls and forwards same direct to the General Manager for approval.

Traffic and General Administration.—The payrolls covering the services of officers and employees in these departments are designated as "General Office" payrolls, each department recording the time in a monthly record or book, from which the information is transferred to monthly payrolls. The payrolls are certified to by the officer in whose office they are originated and receive the approval of the executive officer in charge of that department.

Auditing of Payrolls.—The various rolls after having received the proper certification, are sent to the office of the Auditor of Disbursements, where they receive an exhaustive and thorough verification as to extensions and footings. The rolls are checked to see that they conform to the agreements with the various classes of employees, and are also checked to see that there — no increases in the number employed or in the salaries of men engaged at monthly rates without proper authority having been received. The examination at this time also comprises a check to see that the deductions made from different employees account of board, insurance, uniforms,
70 sale of watches, etc., are properly cared for by entries on payroll showing credit to the parties for whom deductions are made.

As here*be*fore explained, the distributing to operating expense or other expense of the expenditures for labor on the line, is reported by the various division and shop officials, but a distribution of the Traffic and General Administration pay rolls is made by the Auditor of Disbursements, and after having been recorded the Auditor of Disbursemnents certifies to their audit and approval for payment is given by the Comptroller.

When an employee leaves the service after the payroll covering the credit due him has been forwarded to the General Office, a voucher form 548 is issued, but when an employee leaves the service before the preparation of the payroll covering such service, the voucher given him in settlement of his wages is described as a D. Cr. Each official originating payrolls is required to sign a monthly report of the vouchers of each of these forms issued. The report of forms 548 goes to the Treasurer and the report of the D. Cr. vouchers issued accompanies the payroll to the Auditor of Disbursements and he is required to see that the necessary notations are shown opposite the name of each employee who has received a voucher, and that the total of the amounts opposite which these notations are made agrees with the total of the report which accompanies the payroll.

Writing of Pay Checks and Payment by Check.—A tissue or carbon copy of each pay roll accompanies the same when sent to the Comptroller's office, in order that the pay checks may be pre-

pared. The Average number of checks now required to be written monthly is between thirty-four and thirty-five thousand. The
71 number of the check to be written is stamped opposite each name on the payroll and on the tissue or carbon copy of each sheet of the payroll we indicate in pencil the check numbers issued covering the employees named on that sheet. The checks are written by clerks in the Accounting Department after office hours at a stated rate per hundred. After completion of the checks for each set of rolls they are listed and totalized to see that the totals of the written checks correspond with the totals of the payrolls, taking into consideration the discharge vouchers which may have been issued.

There is an indication on each sheet showing to what point checks are to be forwarded for distribution, and unless the checks to cover all employees named on a pay roll sheet are to go — one point for distribution, it is necessary to make up a separate list which accompanies the miscellaneous checks to the points where the employees are to be reached.

Pay rolls and checks are then turned over to the Treasurer for distribution.

Sending out Checks by Treasurer.—Upon receipt of payrolls and pay drafts in the Treasury they are countersigned by employees of the Treasury who are authorized to countersign, as shown on the face of the draft, separated as to the different points of delivery and where a roll specifies that all the drafts shown thereon go to one point, that roll is forwarded by Registered Train Mail or Express, with the drafts accompanied by Instruction Form 1764, enclosed in a large manila envelope showing on the outside Treasurer's number. Registered packages bear adhesive labels and are listed in the Treasury on G. B. O. form 12, in duplicate obtaining mail clerk's receipt therefor.

In case the drafts shown on a payroll go to several points for delivery, it thereby being impractical to let the payroll accom-
72 pany the drafts, such draft or drafts are listed on form 1765-L, or form 1765-S, and sent out also accompanied by Instruction Form 1764. A treasury book record is kept, and this book shows payroll numbers (or numbers of drafts forwarded on forms 1765) and dollars and cents involved, and is the basis of information as to the amount of drafts issued on each bank each day, and the total outstanding at any time, this total being reduced by the amount of drafts paid through New York or out-of-town banks, or by agents.

The rolls as returned after the delivery of drafts are marked off on the record under the column "Date Returned." In case there is undue delay in the return of rolls, tracer is sent on form 1768. There is sent with each lot of drafts a return envelope.

It frequently occurs that after the drafts have been sent, as provided on the rolls, that delivery is required at another point, and to provide for this transfer agents are supplied with forms 1763-L, or 1763-S, which is issued by the agent over his signature "under authority of the office approving payroll." This form provides that a copy be sent to the Treasurer at the time the transfer is made, the

idea being throughout that the Treasurer has at all times a record of where each draft is to be delivered.

The payroll form provides for a certificate in the lower right hand corner covering the distribution of the drafts and each agent or other employee interested is required to sign Treasurer's form T. D. 101, that it is understood that the employee's surety bond covers responsibility in the distribution *od* pay rolls. Drafts are not sent for distribution to other than bonded employees.

Instructions provide that undelivered drafts should be returned by express, after five days.

73 Such drafts are then sent out accompanied by form 1848 as provided therein. In case of neglect in the proper filling out of the roll or other forms, following the distribution of the drafts, attention is called to same by Treasury notice.

Cash Payments Checked Against Payrolls.—On the return of the pay checks to the Accounting Department from the Treasurer, the date of payment is stamped opposite each check number on the payrolls and a list of the open or unsettled items transferred to the account "Unclaimed Wages." In order to insure accuracy in our records the total amount of cancelled pay checks, together with the open and unsettled items as per our records, are balanced against the total of the payrolls. The cancelled checks and payrolls are then placed in the files of the Accounting Department.

Payment of Employees in Cash.—The following is the method employed by plaintiff in making cash settlements with employees:

The payrolls when received from the Accounting Department by the Treasurer, are examined to see that they bear the proper approvals as to payment, and are given over to the Paymaster. The funds with which to make settlement of the payrolls is sent to the Paymaster by the Treasurer via Wells Fargo Express, or, if more convenient, arrangements are made that the money shall be obtained from some of the banks along the line where this company has an account.

In order that the Paymaster shall be provided with the necessary facilities for the protection and disbursements of the funds, a specially designed car known as the "Pay Car," is necessary. The Paymaster is accompanied at least by one assistant and a guard, and an additional man is required to act as watchman each night at terminals.

74 A program for the entire road is arranged and payments are made as nearly as possible in accordance with such schedule. When everything is in readiness the Paymaster usually advises the Division Superintendent the date and hour when he will be ready to pay the terminal point of that division, and about the hour when it should be arranged to start his pay car over the division. Word is then telegraphed ahead along the line so as that there will be as little delay as possible. An attempt is made to have the men engaged at outlying points meet the pay car at stations, but this is not always practicable, and the pay car frequently stops to pay men employed on track sections. At each stopping point it is necessary that the men be lined up as nearly as possible in the same order that their names appear on the payrolls, and no payment can

be made until the employee has been identified to the Paymaster. This identification is usually given by Superintendents, Agents, Master Mechanics, etc.

As an employee approaches the pay car window he announces his name to the Assistant Paymaster, who, after locating the name secures the employee's signature as receipt for the amount, or the employee holds pen or pencil while Assistant Paymaster makes the customary cross-mark. The latter method is usually employed as a time saver. The Assistant Paymaster announces to the Paymaster the name of the employee and amount of money due. To avoid errors the amount is called twice and repeated by the paymaster as he hands the currency to the employee.

In order to accomplish the settlements with employees with as little delay as possible, the Paymaster's time at each point is limited and the work of counting and delivering the money is necessarily very rapidly done, and, consequently, attended by risk of loss.

75 In most cases it is necessary that the movement of pay cars over divisions be done by a special engine and train crew. At terminals and shop extra switching is necessary in order that the car may be placed in the most convenient location, so that the loss of time by employees will be minimized.

On account of the movement of trainmen there are a number of employees missed on each division, and for these special arrangements are necessary, either that the cash shall be sent to some agent and the necessary receipts obtained, or a payroll draft is sent.

Only a portion of the time of the Paymaster is occupied in the actual disbursement of the cash. His accounts are somewhat complicated, and generally speaking it takes about one-half of a Paymaster's time to take proper care of his accounts. At the end of each payment period the Paymaster turns in the pay rolls, together with a list of the unsettled items. The payrolls, when returned to the Accounting Department, are examined to see that they bear evidence that each employee has received his pay with the exception of those names which the Paymaster has reported as unsettled.

The making of payment of employees' wages semi-monthly will necessarily impose upon plaintiff additional expense in the making and auditing of payrolls, the employment of a larger clerical force, increased mileage of Paymaster's cars, additional loss of time of employees from their desks in order to receive their wages, over and above the method of paying said employees monthly as now done, in an amount exceeding the sum of Five thousand dollars per month.

The Executive Officers, Accounting, Treasury, Operating, Engineering, Traffic and Legal Departments of the entire Erie system are located in New York City.

76 Eighth. A considerable proportion of the plaintiff's employees, consisting of enginemen, firemen, conductors, baggagemen, trainmen and brakemen, are required in the performance of their duties to travel at regular intervals long distances within and without the State of New York. During certain periods of the year,

owing to weather and other conditions and congestion of traffic, such employees engaged on freight trains, being their regular places of labor, are frequently and unavoidably delayed many days in completing their runs and returning to divisional points where their wages are paid. Instances arise, where, owing to such unavoidable delays or circumstances, it is not possible to pay such employees their respective wages within the time specified in the Labor Law, as amended by Chapter 442 of the Laws of 1908.

Ninth. It is the intention of the defendant as at present advised, and unless the Court shall otherwise construe the law, to institute an action against the plaintiff for each failure on its part to pay one or more of its employees in accordance with the provisions of the Labor Law, but not to institute separate actions for each separate employee unless the Court shall so construe the law to make it defendant's duty so to do. It is, however, the intention of the defendant to institute an action against the plaintiff for each failure on its part to pay one or more of its employees in accordance with the provisions of the Labor Law irrespective of whether they reside in a State other than New York, or their contract of employment was made in such other State, or whether their services were performed partly within and partly without the State of New York, or whether they are employed wholly or partly in the maritime service.

77 The foregoing stipulation may be introduced on *229* the trial hereof by either party hereto.

Dated April 9, 1909.

GEO. F. BROWNELL,
Plaintiff's Attorney.
EDWARD R. O'MALLEY,
Attorney General.

The map "Plaintiff's Exhibit A" referred to in the foregoing stipulated facts is bound in at the end of this Appeal Book.

Plaintiff's counsel offered in evidence a paper setting forth further stipulated facts, and the same was received in evidence and is as follows:

78 Supreme Court.

ERIE RAILROAD COMPANY, Plaintiff,
vs.
JOHN WILLIAMS, as Commissioner of Labor, etc., Defendant.

It is stipulated that Plaintiff's Exhibit "B," being a classification of employees, showing the number of days worked, total compensation and average compensation per day as per payrolls, year ending June 30, 1908, may be received as part of the plaintiff's evidence in this case. In consenting to this counsel for defendant does not admit the materiality of Plaintiff's Exhibit "B" nor the competency of the fact therein stated.

It is further stipulated, that there has been no material or substantial change in the matters referred to in Plaintiff's Exhibit "B" since the fiscal year ending June 30th, 1908, and that plaintiff's exhibit is fairly descriptive of the conditions therein referred to as they now exists.

EDWARD R. O'MALLEY,
Attorney for Defendant.

PLAINTIFF'S EXHIBIT B.

Erie Railroad Company.

Chicago & Erie Railroad Company.

Classification of Employees: Showing Number of Days Worked, Total Compensation, and Average Compensation per Day.

As per Pay Rolls Year Ending June 30th, 1908.

Classification number.	Employed as—	System. Total number of days worked.	Total compensation.	Average compensation per day.
1.	Clerks—Division Superintendent's Office	53,382	111,789.27	2.09
2.	Clerks—Division Engineer's Office	10,833	21,556.64	1.99
3.	Trainmasters—Passenger	2,069	10,095.50	4.88
4.	Trainmasters—Freight	946	4,359.50	4.61
4½.	Trainmasters—Freight & Passenger	3,475	15,700.92	4.52
5.	Train Despatchers	37,044	139,846.34	3.78
6.	Passenger Agents	17,033	35,700.86	2.10
7.	Freight Agents	20,905	72,925.66	3.49
8.	Freight & Passenger Agents	74,528	132,435.82	1.78
9.	Agents and Operators	83,056	138,449.64	1.67
10.	Clerks and Operators—Station	52,286	82,160.74	1.57
11.	Clerks—Passenger Station	20,841	37,860.38	1.82
12.	Clerks—Freight Station	340,505	601,026.46	1.77
13.	Clerks—Freight and Passenger Station	44,374	61,447.61	1.38
14.	Baggagemen—Station	57,469	88,940.86	1.55
15.	Station Telegraph Operators	104,118	187,114.45	1.80
16.	Other Telegraph Operators	212,317	368,196.99	1.73
17.	Outside Telegraph Employees—Repairmen	8,441	6,931.91	.82
18.	Laborers at Stations	161,454	207,004.75	1.28

PLAINTIFF'S EXHIBIT B—*Continued.*

Classification number.	Employed as—	System. Total number of days worked.	Total compensation.	Average compensation per day.
19.	Warehousemen at Stations	715,707	1,205,298.16	1.68
20.	Other Station Employees	199,076	306,610.76	1.54
21.	Crossing Flagmen and Watchmen	157,332	172,535.05	1.10
21½.	Block & Int'l'k'g Signal'n not Operators	46,372	68,612.66	1.48
22.	Yardmasters	44,638	153,022.11	3.43
23.	Engineers—Yard	96,094	391,554.97	4.07
24.	Firemen—Yard	107,511	245,789.42	2.29
25.	Conductors—Yard	105,772	336,455.86	3.18
26.	Brakemen—Yard	261,996	723,208.67	2.76
27.	Yard Watchmen and Switch Tenders	57,797	94,825.84	1.64
28.	Roundhousemen	464,219	778,084.27	1.68
29.	Engineers—Freight Road	246,712	1,011,856.12	4.10
30.	Engineers—Passenger Road	105,019	392,574.53	3.74
31.	Firemen—Freight Road	254,893	635,450.35	3.49
32.	Firemen—Passenger Road	101,707	228,187.97	2.24
80				
33.	Conductors—Freight Road	193,011	635,215.06	3.29
34.	Conductors—Passenger Road	77,953	286,758.86	3.68
35.	Flagmen—Freight Road	.....	.....	....
36.	Flagmen—Passenger Road	23,959	52,138.31	2.18
37.	Brakemen—Freight Road	480,630	1,081,543.05	2.25
38.	Brakemen—Passenger Road	105,675	220,530.30	2.06
39.	Baggagemen—Train	38,817	83,206.97	2.14
40.	Baggagemen and Brakemen—Train	2,608	5,973.04	2.29
41.	Other Trainmen	4,220	6,120.45	1.45

42.	Civil Engineers	42,665	134,457.60	3.15
43.	Supervisors	13,284	42,428.31	3.19
44.	Clerks and Draughtsmen—Roadway	21,286	42,514.79	2.00
45.	Carpenters—Roadway	137,935	335,081.06	2.43
46.	Watchmen—Roadway	3,963	5,602.34	1.41
47.	Bricklayers and Masons	31,049	66,439.27	2.14
48.	Painters—Roadway	18,758	44,275.81	2.36
49.	Dock Builders	11,876	28,521.06	2.40
50.	Section Foremen	179,454	350,288.61	1.95
51.	Trackmen	1,183,204	1,634,033.86	1.38
52.	Other Roadway Employees	369,673	623,284.10	1.69
53.	Shop Clerks	91,290	146,391.94	1.60
54.	Storekeepers	6,441	15,851.65	2.46
55.	Foremen—Shops	123,256	344,196.70	2.79
56.	Machinists	335,607	971,326.23	2.89
57.	Blacksmiths	51,467	130,629.01	2.54
58.	Carpenters—Shops	117,086	264,699.60	2.27
59.	Boiler Makers	62,378	182,875.14	2.93
60.	Painters—Shops	22,501	55,265.05	2.46
61.	Car Builders	30,583	66,212.64	2.17
62.	Apprentices—Shops	126,802	188,820.84	1.49
63.	Laborers—Shops	308,688	426,791.95	1.38
64.	Other Shop Employees	847,943	1,541,881.91	1.82
65.	Car Repairers	390,676	610,251.01	1.56
66.	Car Inspectors	90,076	148,601.31	1.64
67.	Stationary Engineers and Pumpers	58,117	99,723.35	1.72
68.	Bridgemen	27,675	85,802.34	3.10
69.	Architects and Building Inspectors	8,886	22,971.51	2.59
	Total	9,909,413	20,048,316.07	2.02

81 Plaintiff's counsel offered in evidence Chapter 205 of the Laws of 1909, entitled "An Act to Amend the Penal Law in Relation to the Payment of Wages," which became a law on the 17th day of April, 1909, and subsequent to the commencement of this action. Same was received in evidence.

Defendant's counsel offered in evidence Chapter 206 of the Laws of 1909, entitled "An Act to Amend the Labor Law in Relation to the Payment of Wages by Corporations," which became a law on the 17th day of April, 1909, subsequent to the commencement of this action. The same was received in evidence.

It is agreed that any portion of said acts may be referred to by counsel for either party hereto upon any appeal herein with the same force and effect as if the said act were herein printed in full.

Both sides then rested, and the case was orally argued and briefs submitted to the Court, who reserved decision.

The foregoing case contains all the evidence received and the proceeding had upon the trial of the above entitled action.

82 *Stipulation Settling Case.*

It is hereby stipulated that the foregoing case contains all the evidence received and proceedings had upon the trial of this action, and that the same be settled and ordered to be filed and annexed to the judgment roll herein.

Dated August 18, 1909.

GEORGE F. BROWNELL,
Attorney for Plaintiff.
EDWARD R. O'MALLEY,
Attorney-General, Attorney for Defendant.

Order Settling Case.

On above stipulation, the foregoing case on appeal, containing all the evidence, is hereby settled and ordered on file.

Dated, August 20, 1909.

JAMES A. BETTS, *J. S. C.*

Stipulation Waiving Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, judgment roll, and the case and exceptions as settled, and the whole thereof, now on file in the office of the Clerk of the County of Albany; and certification
83 thereof by the Clerk of said County, pursuant to Section 1353 of said Code 247 is hereby waived.

Dated August 20, 1909.

GEORGE F. BROWNELL,
Attorney for Plaintiff.
EDWARD R. O'MALLEY,
Attorney-General, Attorney for Defendant.

Affidavit of No Opinion.

New York Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

STATE OF NEW YORK,
County of New York, ss:

George F. Brownell, having been duly sworn, deposes and says:

I am the attorney for the plaintiff in the above entitled
84 action. No opinion was given in this case by the Justice of the Supreme Court before whom this action was tried.

GEORGE F. BROWNELL.

Sworn to before me this 12th day of August, 1909.

A. L. TRAVIS,
Notary Public, No. 75, Kings County.

Certificate filed in New York County.

Order Filing Case in Appellate Division.

Pursuant to Section 1353 of the Code of Civil Procedure, it is

Ordered, that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court, in the Third Judicial Department.

Dated August —, 1901.

JAMES A. BETTS, *J. S. C.*

85 *Order of Affirmance.*

At a Term of the Appellate Division of the Supreme Court of the State of New York, Held at the Town Hall, in the Village of Saratoga Springs, N. Y., Commencing on the 14th Day of September, 1909.

Present: Hon. Walter Lloyd Smith, Presiding Justice.
" Alden Chester,
" John M. Kellogg,
" Aaron V. S. Cochrane,
" Albert H. Sewell,
Associate Justices.

ERIE RAILROAD COMPANY, Plaintiff-Appellant,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant-Respondent.

The appeal from the judgment in the above-entitled action, made on the 28th day of July, 1909, and entered in the Albany County Clerk's Office on the 4th day of August, 1909, dismissing the plaintiff's complaint with costs, coming on to be heard in this court, and after hearing George N. Orcutt, Esq., for the plaintiff-appellant,
and Edward R. O'Malley, Attorney-General and Edward H.
86 Letchworth, Deputy Attorney-General, for the defendant respondent, and due deliberation being had thereon,

Now, on motion of Edward R. O'Malley, Attorney-General, attorney for the defendant-respondent,

Ordered, that the said judgment be and the same hereby is in all respects affirmed with costs.

All concur except Kellogg and Sewell, JJ., dissenting.

JOSEPH H. HOLLANDS, *Clerk.*

A copy.

[SEAL.] JOSEPH H. HOLLAND, *Clerk.*

Return in Albany County Clerk's Office endorsed: Filed, January 11th, 1910.

Judgment on Order of Appellate Division.

Supreme Court.

ERIE RAILROAD COMPANY, Plaintiff-Appellant,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant-Respondent.

The plaintiff in the above-entitled action, having appealed
87 from the judgment entered herein in the Albany County Clerk's Office on August 4th, 1909, dismissing the complaint of the plaintiff and said appeal having been heard at a term of the Appellate Division of the Supreme Court, held at Saratoga Springs, in and for the Third Judicial Department, on the 15th day of September, 1909; and said Court after due deliberation having affirmed said judgment, with costs and disbursements to the defendant; and the remittitur of said Court, containing a copy of its order of affirmance, together with the record and original case and papers upon which the appeal was heard, in due form having been transmitted to the Albany County Clerk and filed in his office,

Now, upon motion of Edward R. O'Malley, Attorney-General, attorney for said defendant.

It is ordered, adjudged and decreed, that the said judgment so appealed from be and the same hereby is in all respects affirmed; and

It is further ordered and adjudged, that the defendant, John Williams, as Commissioner of Labor of the State of New York, recover of and from the plaintiff, Erie Railroad Company, the sum of $95.00, his costs and disbursements on said appeal, and that execution issue therefor.

JOHN FRANEY, *Clerk.*

Endorsed: Filed, January 11th, 1910.

88 *Notice of Appeal to the Court of Appeals.*

Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff-Appellant,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant-Respondent.

SIRS: Please take notice, that the plaintiff-appellant, Erie Railroad Company, hereby appeals to the Court of Appeals of the State of New York from the judgment of the Appellate Division of the Supreme Court for the Third Department, entered and filed herein in the office of the Clerk of the County of Albany, on or about the 11th day of January, 1910, affirming the final judgment of the Supreme Court, Albany County, entered and filed herein in the office of the Clerk of the County of Albany, on or about the 4th day of August, 1909, dismissing the plaintiff's complaint with costs, and also from the order of said Appellate Division herein, entered in the office of the Clerk of said Appellate Division, a certified copy of which, together with the return upon which said judgment was entered, having been filed in the office of the Clerk of Albany County, on or about the 11th day of January, 1910, and said plaintiff-appellant hereby appeals from each and every part of said
89 judgment, and order, as well as from the whole of each.

Dated, New York, N. Y., January 22, 1910.

Yours, etc.,

GEORGE F. BROWNELL,
Attorney for Plaintiff-Appellant.

50 Church Street, New York City.

To County Clerk of Albany County, and Hon. Edward R. O'Malley, Attorney General, Attorney for Defendant-Respondent, Capitol, Albany, New York.

Affidavit of No Opinion.

In the Court of Appeals of the State of New York.

ERIE RAILROAD COMPANY, Plaintiff-Appellant,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant-Respondent.

STATE OF NEW YORK,
County of New York, ss:

George F. Brownell, being duly sworn, deposes and says, that he is the attorney for the plaintiff-appellant herein. That no
90 opinion was written or handed down in this case by the Justice of the Supreme Court before whom this action was tried nor by any of the Justices of the Appellate Division before whom the appeal was argued, although three of said Justices voted for affirmance of the judgment and two for reversal, and deponent further says, the reasons of the Court below for its judgment cannot be procured.

GEORGE F. BROWNELL.

Sworn to before me this 31st day of January, 1910.
A. L. TRAVIS,
Notary Public, No. 75, Kings County.

Certificate filed in New York County.

Stipulation Waiving Certification.

Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff-Appellant,
against
JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant-Respondent.

It is hereby stipulated, by and between the attorneys for the respective parties to the above-entitled action, that the fore-
91 going are true copies of the judgment roll, notice of appeal, and case and exceptions herein, order of affirmance, judgment of affirmance, notice of appeal to the Court of Appeals and affidavit of no opinion, and of the whole of said originals now on file in the Albany County Clerk's Office, and that the same may be used upon the appeal herein with the same force and effect as if certified to by the Albany County Clerk, certification thereof being hereby expressly waived.

GEORGE F. BROWNELL,
Attorney for Plaintiff-Appellant.
EDWARD R. O'MALLEY,
Attorney-General, Attorney for Defendant-Respondent.

92 STATE OF NEW YORK,
County of Albany, Clerk's Office, ss:

I, William J. Grattan, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify that I have compared the annexed copy, Case on Appeal with the original thereof, filed in this office on June 25, 1910, and the annexed copy Final Judgment with the original thereof, filed in this office on June 27, 1910, and that the same is a correct transcript therefrom and of the whole of said originals. I further certify that the printed memoranda opinion hereto annexed in Erie Railroad Co. against John Williams, as Commissioner of Labor of the State of New York is a correct transcript of said entitled case and memoranda as contained in Vol. 199, Page 525, of the Official New York Court of Appeals Report. And that the remaining portion of the Printed Case hereto annexed entitled N. Y. C. & H. R. R. Co. against John Williams as Commissioner of Labor of the State of New York is a correct transcript of the opinion of the Court therein as found and contained in Vol. 199 of the Official New York Court of Appeals Reports pages 113 to 127 inclusive.

In testimony whereof I have hereunto set my hand and affixed my official seal this — day of May, 1912.

[Seal Albany County, July 1847.]

WM. J. GRATTAN, *Clerk.*

93 WILLARD BARTLETT, *J.:*

The purpose of this litigation is to test the constitutionality of a recently-enacted statute requiring railroad corporations in this state to pay the wages of their employees semi-monthly and in cash. In order to present the question to the courts for determination the plaintiffs have brought suit in equity against the state commissioner of labor to restrain him from instituting actions to recover the penalties prescribed by the statute for non-compliance with its provisions. Judgment was rendered in favor of the defendant at Special Term, and affirmed, by a divided court, at the Appellate Division. The plaintiff has appealed to this court.

In the briefs of counsel and in the argument at the bar it has been assumed that the provisions of the Labor Law which are the subject of attack operate not only to introduce the requirement of semi-monthly payments into all contracts between the railroad company and its employees in which there is no express stipulation as to the time when wages shall be payable, but also to prohibit such corporations from making any contracts with their employees which shall vary the time of payment from that prescribed in the statute. This view is sustained by the amendment to the Penal Law enacted in 1909 when section 1272 was made to provide that a corporation which does not pay the wages of all its employees in accordance with the provisions of the Labor Law is guilty of a misdemeanor.

94 (Laws of 1909, chap. 205.) It is true that this amendment was not adopted until after the commencement of the present action, but it was in force when the judgment was rendered and it

serves to indicate the intent of the legislature in enacting the Labor Law itself. Where railroad corporations are commanded to pay the wages of their employees at fixed periods and are made liable to indictment and criminal punishment for failure so to do, the implication is tolerably clear that they may not enter into contracts containing provisions at variance with the legislative command. Accordingly I think we must treat the requirement of the Labor Law that the employees of a steam surface railroad corporation shall be paid semi-monthly and in cash as a restraint upon the freedom of such corporations to make any contract to pay the wages of their employees otherwise than semi-monthly and in cash. If this were not the necessary construction the legislation in question would present no serious constitutional difficulty. If we were at liberty to hold that the requirement for semi-monthly cash payments was to apply only in cases where it was not stipulated otherwise in the contract of employment, neither the railroad companies nor their employees would have even any plausible cause for complaint, inasmuch as both master and servant would be left at liberty to make any contract they pleased in regard to the time when the servant's wages should be payable and the medium in which they should be paid. The substance of the grievance which is asserted in behalf of the corporations in this litigation is that they are left no option in the matter but must pay in the method and medium prescribed, although their employees might be entirely willing to agree otherwise. Their contention is that the Labor Law deprives them of the right of making contracts with their employees on advantageous terms, and that this is beyond the power of the legislature. Of course, if there is no power in the legislature thus to limit the right of contract between steam surface railroad corporations and their employees, this legislation must fail.

95 The section of the Labor Law requiring the cash payment of wages applies to manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph, telephone and express companies; every corporation engaged in harvesting and storing ice; every water company not municipal; and every person, firm or corporation engaged in any public work for the state or any municipal corporation. This section is much wider in its application than the clause prescribing the semi-monthly payment of wages, which relates only to "every person or corporation operating a steam surface railroad."

These enactments are attacked as unconstitutional on three grounds. It is contended, first, that they deprive the plaintiff and its employees of liberty and property without due process of law; secondly, that they deny them the equal protection of the laws; and, thirdly, that they constitute a restriction upon interstate commerce. Although the argument has covered a wide field an analysis of the discussion resolves the defense into two propositions of law: (1) That the legislation which is the subject of attack is a proper exercise of the reserved power to amend corporate charters contained in the state constitution; and (2) that it constitutes a proper and legitimate exercise of the police power of the state. If either of these

propositions is sound the legislation is constitutional and the judgment must be affirmed.

In this state, since the enactment of chapter 381 of the Laws of 1889, many classes of corporations, including steam surface railroad companies, have been required by law to pay their employees in cash. An act to provide for the weekly payment of wages by corporations was passed in the following year (Laws of 1890, ch. 388) and amended three years later (Laws of 1893, ch. 717), but steam surface railroads were expressly excepted from its operation. In 1895, however, the act of 1890 was amended so as to provide, among other things, as follows:

"Every person or corporation operating a steam surface railroad shall on or before the twentieth of each month pay the employees thereof the wages earned by them during the preceding
96 calendar month, unless any such employee shall be absent from his regular place of labor at the usual time of payment, in which case payment shall be made at any reasonable time thereafter upon demand." (Laws of 1895, ch. 791, section 1.)

The monthly payment system thus prescribed for steam surface railroads continued down to the time of the enactment of the provision of the Labor Law which is now assailed providing that the wages of the employees of such corporations shall be paid semi-monthly. The term employee as used in the Labor Law is defined by the statute itself to mean "a mechanic, workingman or laborer who works for another for hire" (section 2); and a question is raised as to whether this definition is broad enough to include conductors, trainmen or locomotive engineers. It is alleged by the appellant and conceded by the respondent that it will cost the railroad company $5,000 a month more to pay its employees semi-monthly than it does to pay them monthly.

In the briefs of counsel the constitutionality of the semi-monthly cash payment law (which term I use for convenience in referring to the provisions of the statute prescribing the time of payment and requiring it to be in cash) is discussed in two aspects: (1) As an exercise of the police power of the legislature, and (2) as an exercise of the reserved power to amend the charters of corporations. In the view which I have taken of the case I shall proceed to consider only the question of its validity as warranted by the reserved power to amend.

It is true as has already been pointed out that the statutory requirement of semi-monthly payments applies to every person as well as to every corporation operating a steam surface railroad, thereby referring no doubt to the operation of short branch lines by individuals or partnerships in connection with the great railroads of the state, for convenience in sending freight to and from the premises of extensive manufacturing concerns. Such branch lines are only incidental to the general railroad business of the state and the number of employees thereon must be comparatively
97 few. The constitutionality of the statute is not questioned here by any individuals operating lines of this character, and even if the enactment should be deemed unconstitutional so far as persons are concerned the provision relating to them is readily

separable from the rest of the statute relating to corporations and its invalidity in this respect, if so adjudged, need not affect the application of the provision to steam surface railroad corporations. (Berea College v. Kentucky, 211 U. S. 45.) It matters not that both provisions are contained in the same section. (Loeb v. Columbia Township Trustees, 179 U. S. 472, 490.)

In exercising the reserved power to amend corporate charters the legislature may not deprive a corporation of property already acquired or the proceeds of lawful contracts previously made or destroy or substantially impair the purposes of the grant or rights which are vested in the corporation thereunder; but it may make any alteration or amendment of a charter "which will not defeat or substantially impair the object of the grant, or any rights vested under it, and which the legislature may deem necessary to secure either that object or any public right." (Close v. Glenwood Cemetery, 107 U. S. 466, 476.) In the case of corporations such as railroad companies which are clothed to some extent with a public trust and are under an obligation to discharge duties which affect the community at large the legislature may make amendments in furtherance of the public interest for the benefit of their employees even though such amendments operate as limitations upon the exercise of the right to contract. Such is substantially the doctrine enunciated in the case of St. Louis, Iron Mountain & St. Paul Ry. Co. v. Paul (173 U. S. 404), where the Supreme Court of the United States was called upon to pass on the constitutional validity of an act of the Arkansas legislature which required railroad companies whenever they discharged an employee to pay him his unpaid wages then earned at the contract rate without abatement or deduction on the day of his discharge. The state court upheld this legislation as a valid exercise of the power to amend corporate charters
98 reserved to the legislature in the State Constitution. It was contended in the Supreme Court of the United States that as to railroad corporations organized prior to its passage the statute was void because in violation of the fourteenth amendment; or, in other words, because it amounted to a deprivation of property forbidden by the Federal Constitution. The court, however, declined to sustain this view, but affirmed the judgment of the Supreme Court of Arkansas holding that inasmuch as the right to contract was not absolute but might be subjected to the restraints demanded by the safety and welfare of the state, the legislative power to amend corporate charters in this manner could not be disputed on the ground that its exercise was an infraction of the fourteenth amendment.

In the Sinking Fund Cases (99 U. S. 700, 720) the same court in discussing the power reserved to Congress to amend the charters of the great Pacific railroads, reviewed the earlier decisions on the general subject and held that the reservation of the power of amendment "affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges and immunities derived by its charter directly from the State," citing Tomlinson v. Jessup (15 Wall. 459).

In this state the same rule has been laid down with equal em-

phasis. As illustrations of the extent to which the legislature might subject corporations to new restrictions or increased burdens in the exercise of its reserved power to amend corporate charters, Judge Denio in Albany Northern R. R. Co. v. Brownell (24 N. Y. 345) called attention to one case in which the Court of Appeals had held that the line of a plankroad might be extended and its capital increased and to another in which a banking corporation chartered under the general act of 1838 without personal liability on the part of the shareholders was so changed as to render the shareholders liable for all the debts of the company to an amount equal to the stock held by them respectively. (See Schenectady & S.
99 Plankroad Co. v. Thatcher, 11 N. Y. 102; Matter of Oliver Lee & Co.'s Bank, 21 N. Y. 9.) "It is difficult to put precise limits upon the power of the legislature thus reserved over corporations created by it or under its authority," said Judge Earl in Mayor, etc., of N. Y. v. Twenty-third St. Ry. Co. (113 N. Y. 311, 317). * * * As it has the power utterly to deprive the corporation of its franchise to be a corporation, it may prescribe the conditions and terms upon which it may live and exercise such franchise. It may enlarge or limit its powers, and it may increase or limit its burdens." The appellant complains because the legislature has increased its burdens by the sum of $60,000 additional expenses which it must incur annually in order to pay its employees with the frequency prescribed by the statute; but the corporators must be deemed to have contemplated the possibility of any change of burden within the legislative power to make when they organized the railroad company.

In New York a special charter may be amended by a general act which does not refer specifically to such charter. (Pratt Institute v. City of New York, 183 N. Y. 151; People ex rel. Cooper Union v. Gass, 190 N. Y. 323.) The case of State v. Haun (61 Kans. 146) is cited as authority against this method of amendment, but it is in opposition to the view repeatedly asserted and assumed in this court, and is also opposed to decisions on the subject in other jurisdictions, where it is held that the fact that an act of the legislature is general in its terms and makes no direct or express reference to the charter of any particular corporation does not prevent it from operating as an amendment to the charter of any corporation comprehended in the classes to which it refers. Such was the effect given by the Supreme Court of the United States to a general statute of Kentucky which was construed as operative to amend the charter of Berea College, although it was not in terms designated as an amendment thereof. (Berea College v. Kentucky, supra.)

In Massachusetts a general statute relative to railroad crossings was held to operate as an amendment to the act incorporating
100 the Boston and Providence Railroad Corporation, under the reserved power of the legislature to alter or amend corporate charters. (City of Roxbury v. Boston & Providence Railroad Corporation, 6 Cush. 424.) Similarly it has been held in Maine that an act, general in its terms and applicable to all railroads, affects the charter of any railroad company which contains no express

limitation to the contrary and may be passed in the exercise of the legislative power to modify all charters of corporations. (Bangor, Oldtown & Milford R. R. Co. v. Smith, 47 Me. 34.)

The semi-monthly payment clause of the Labor Law being applicable to all steam surface railroad corporations in the state operated as a repeal of all the charters of such corporations, if there were any, which provided for a different time of payment for employees and as an amendment or addition to all charters in which no time of payment was prescribed. That the legislature by enactments designed to operate prospectively, and not interfering with vested rights, may thus regulate contracts between corporations and their employees in regard to the times when their wages shall be paid, has been expressly held in Massachusetts and Vermont. Statutes requiring corporations to pay their employees in lawful money have been sustained as falling within the reserved power to amend charters in Vermont and Maryland and by the Supreme Court of the United States as falling within the police power in a case which arose in Tennessee. (Knoxville Iron Co. v. Harbison, 183 U. S. 13.)

In 1895, under a provision of the Constitution of Massachusetts permitting such procedure, the justices of the Supreme Judicial Court of that state were requested to give their opinion to the house of representatives upon the question whether it was within the constitutional power of the legislature to extend the application of an existing law relative to the weekly payment of wages by corporations to private individuals and partnerships as provided in a bill then pending before the legislature. In response to the request the justices transmitted to the house of representatives an opinion in
101 which their conclusion was expressed as follows: "Without attempting to define the limits of the power of the General Court [the legislature] in Massachusetts to control the right of its inhabitants to make contracts generally, we cannot say that a statute requiring manufacturers to pay the wages of their employees weekly is not one which the General Court has the constitutional power to pass if it deems it expedient to do so." (Opinion of Justices, 163 Mass. 589.) This opinion was signed by all the members of the Supreme Judicial Court, including Mr. Justice Oliver Wendell Holmes, now an associate justice of the Supreme Court of the United States. In reference to the conclusion reached, however, it is important to note, what the justices themselves expressly point out, that the legislative power granted to the General Court by the Constitution of Massachusetts is more comprehensive than that found in the Constitutions of some of the other states. The legislature is empowered to pass all manner of wholesome and reasonable laws "so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same." The judges further say that the considerations which may cause the legislature to determine what legislation is required by good public policy as thus defined are not for the court to weigh except so far as may be necessary to determine whether the legislation proposed is repugnant or contrary to the Constitution.

The Weekly Payment Act of Vermont (1906) provides that a

mining, quarrying, manufacturing, mercantile, telegraph, telephone, railroad or other transportation corporation and an incorporated express, water, electric light or power company doing business in the state shall pay each week, in lawful money, each employee engaged in the business, the wages earned by such employee to a date not more than six days prior to the date of such payment; provided that if at any time of payment an employee is absent from his regular place of labor, he shall be entitled to such payment on demand. It prohibits the payment of the employees of any such corpora-
102 tion in scrip, vouchers, due-bills or store orders, except in the case of co-operative corporation in which the employee is a stockholder; and it provides that no corporation shall require an agreement from an employee to accept wages at any other period as a condition of employment. (Lawrence v. Rutland R. R. Co., 80 Vt. 370.)

In the case cited, while the reserved power of amendment was most strongly asserted, it was said to be, like the police power, limited by the requirements of the public good. (Page 383.) "And that the Act is within the scope of that power cannot be doubted, for its requirement, especially as far as it relates to the defendant and to the class to which it belongs, which are clothed with a public trust, and discharge duties of public concern, affecting the community at large,—is promotive of the public good in protecting their employees to the limited extent it does.

In the same case it is held that the medium of payment is as much within the scope of the reserved power of amendment as the time of payment. The opinion deals so fully and admirably with every substantial question involved in the present appeal that it is difficult to add anything of value to the argument of Chief Justice Rowell in support of legislation of this character.

An act of the Maryland legislature passed in 1880 provided that every corporation engaged in mining or manufacturing or operating a railroad in Allegany county and employing ten hands or more, should pay its employees the full amount of their wages in legal tender money of the United States. The Union Mining Company, a corporation within the purview of the act, was the defendant in a suit brought to test its constitutionality. It was conceded that the legislature when it incorporated the Union Mining Company reserved the right to alter or amend its charter at pleasure. Hence, said the Maryland Court of Appeals, there could be no doubt "that the legislature could enact a law prohibiting the corporation from paying its employees otherwise than in money, and that it could forbid
103 the corporation from making contracts with them for payment in anything but money." (Shaffer & Munn v. Union Mining Co., 55 Md. 74.)

The discussion thus far has related to the contention of the appellant that the enactments in question deprive the parties of liberty and property without due process of law. The objection that they operate as a denial of the equal protection of the laws is equally untenable. A classification of corporations with reference to their relations to the public is manifestly reasonable. No other corporations occupy precisely the same relation to the public as steam surface

railroad companies, and the fact that no other corporations may have been subjected to the same requirement in respect to the payment of wages does not invalidate the requirement. As long as the classification has a basis in reason and all corporations of the same class are treated alike, the action of the legislature may not be condemned by the courts for inequality.

As to the objection that the semi-monthly payment law constitutes an unconstitutional interference with interstate commerce, it is to be observed that it is not in conflict with any legislation by Congress, nor does it affect interstate commerce directly. It relates to the wages of railway servants employed wholly within the state of New York as well as to the wages of those whose duties take them from this state into others. The subject is one upon which Congress has not undertaken to act. The cases in which state legislation has been judicially condemned for interference with the commercial power of Congress have been cases where the interference was direct. "In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution." (Sherlock v. Alling, 93 U. S. 99, 103.) If its effect upon interstate commerce is only incidental a state law
104 is not forbidden by the commerce clause of the Federal Constitution, and may remain in force until and unless it is displaced by a congressional enactment dealing with the subject-matter. (Nashville, C. & St. L. Railway v. Alabama, 128 U. S. 96.) "While the laws of the States must yield to Acts of Congress passed in execution of the powers conferred upon it by the Constitution, the mere grant to Congress of the power to regulate commerce with foreign nations and among the States did not, of itself and without legislation by Congress, impair the authority of the States to establish such reasonable regulations as were appropriate for the protection of the health, the lives and the safety of their people." (New York, New Haven & Hartford R. R. Co. v. New York, 165 U. S. 628, 631.) Neither did it impair the authority of the states to amend the charters of corporations partly engaged in interstate commerce so as to promote the welfare of their employees, under "the power remaining with the State to regulate the relative rights and duties of all persons and corporations within its limits." (Ibid, 632.) Until Congress shall intervene to regulate the payment of wages by interstate carriers, I think such state enactments as that under consideration are free from the objection that they constitute commercial regulations solely within the power of the Federal government to prescribe.

In reaching the conclusion that the New York statute requiring steam surface railroad corporations to pay their employees semi-monthly and in cash is a valid enactment under the reserved power of the legislature to amend corporate charters, I have not overlooked the cases in which similar legislation has been condemned in other jurisdictions. I will now refer to the decisions of this character which seem most worthy of notice.

The case of Godcharles v. Wigeman (113 Pa. St. 431) involved the constitutionality of the Pennsylvania Store Order Act of 1881, which declared that all orders given by manufacturers to their workmen payable in goods or anything other than money to be void, and prohibited the use of such orders in the payment of wages by
105 manufacturers to their employees. The Supreme Court declared that this was an attempt by the legislature to do what cannot be done in this country; that is, prevent persons who are sui juris from making their own contracts. Mr. Justice Gordon said: "The act is an infringement alike of the right of the employer and the employee; more than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood but subversive of his rights as a citizen of the United States." The case contains nothing bearing upon the exercise of the reserved power to amend corporate charters, but is simply a denial that the legislation which was the subject of criticism could be enacted in the exercise of the police power.

An act to provide for the weekly payment of wages by corporations passed by the Illinois legislature in 1891 was held to be unconstitutional in the case of Braceville Coal Co. v. People (147 Ill. 66) on the ground that it did not apply to all corporations existing within the state or to all that had been or might be organized for pecuniary profit under the general incorporation laws of the state. The constitution of Illinois provides: "No corporation shall be created by special laws or its charter extended, changed or amended * * * but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created." The Supreme Court of Illinois held that this provision of the Constitution required all amendments to charters of existing corporations to be made by general laws applicable alike to all existing under the same conditions; and that inasmuch as the weekly payment law could apply to particular corporations only and not to the general body of corporations it could not be upheld.

The Revised Statutes of 1889 in Missouri made it a misdemeanor for any corporation, person or firm engaged in manufacturing or mining to issue in payment of the wages of laborers any order, check, memorandum, token or evidence of indebtedness payable otherwise than in lawful money of the United States, unless the same
106 were negotiable and redeemable at its face value in cash, goods or supplies at the option of the holder at the store or other place of business of the employer. The Supreme Court of Missouri held that this was class legislation and violative of the constitutional guaranty of due process of law. The court conceded that the legislature might regulate the business of mining and manufacturing so as to secure the health and safety of the employees but it denied that such was the scope of the enactment in question. The legislation was condemned on the ground that it denied to persons engaged in mining and manufacturing the right to make and enforce the most ordinary, every-day contracts—a right which is accorded to all other persons. "This denial of the right to contract," says the opinion, "is based upon a classification which is purely arbitrary, because the ground of the classification has no relation

whatever to the natural capacity of persons to contract." (State v. Loomis, 115 Mo. 307, 315.) There was an able dissenting opinion in which it was strongly argued that statutes designed to prevent fraud or oppression in the payment of wages in mining and manufacturing enterprises are not objectionable on the ground of the selection or classification of those enterprises as subjects for separate legislation. (See page 320.)

An Indiana statute requiring all employers of labor to make weekly payment of the wages due their employees was adjudged unconstitutional as not falling within the police power in Republic Iron & Steel Co. v. State (160 Ind. 379). There, as the court said, the statute took away "from both the employer and employé, whether in the shop, in the store or on the farm, all power to contract for labor, except upon terms of weekly payment of wages in cash," and this was pronounced an unreasonable and therefore unconstitutional restriction. No question of the reserved power to amend corporate charters appears to have been considered.

Perhaps the strongest authority in favor of the appellant in any state court of last resort is Johnson v. Goodyear Mining Company (127 Cal. 4), which invalidated a California statute requiring every corporation doing business in the state to pay the wages of its employees in lawful money or checks negotiable at their face value on demand and which gave the employee a preferential lien on all the property of the corporation for the amount of his wages. It was held that such legislation could not be upheld under the reserved power to amend or on any other theory. On the other hand, the same statute had previously been adjudged to be constitutional by the Circuit Court of the United States in Skinner v. Garnett Gold Mining Co. (96 Fed. Repr., 735).

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Again and again the courts of this country have asserted the proposition, in almost every form in which the English language can phrase it, that it is their duty to uphold a statute enacted by the legislature as constitutional if it is possible to do so without disregarding the plain command or necessary implication of the fundamental law. If the lawmakers have not violated the Constitution their work must stand until they themselves detroy it, no matter what the courts may think of its wisdom or probable effect. "The courts have no right to set aside, to arrest or nullify a law passed in relation to a subject within the legislative authority on the ground that it conflicts with their notions of natural right, absolute justice or sound morality." (Slack v. Jacob, 8 W. Va. 612.) There is an irreconcilable conflict in the decisions in different jurisdictions as to the constitutional validity of labor legislation fixing the medium and time of payment of the wages of those who work for corporations. After the foregoing review of the leading cases, I find no difficulty in sustaining our New York statute on the ground which has been stated. It does not confiscate corporate property directly or indirectly. It does impose a greater future burden upon the corporations to which it relates; but that, I think, is within the power of the legislature to the extent to which it has been exercised in this case.

For the foregoing reasons I advise the affirmance of this judgment, with costs.

Cullen, Ch. J., Gray, Werner, Hiscock and Chase, JJ., concur.

Judgment affirmed.

108 ERIE RAILROAD COMPANY, Appellant,

v.

JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Respondent.

Erie R. R. Co. v. Williams, 136 App. Div., 902, affirmed.

(Argued February 28, 1910; Decided June 14, 1910.)

Appeal from a judgment of the Appellate Division of the Supreme Court in the third judicial department, entered January 11, 1910, affirming a judgment in favor of defendant entered upon a dismissal of the complaint by the court on trial at Special Term in an action to restrain the defendant from instituting any action or proceeding against the plaintiff for the recovery of penalties for violations of the provisions of the Labor Law requiring railroad corporations to pay their employees semi-monthly in cash.

George N. Orcutt and George F. Brownell for appellant

Edward R. O'Malley, Attorney-General (Edward H. Letchworth of counsel), for respondent.

Judgment affirmed, with costs, on opinion in N. Y. C. & H. R. R. R. Co. v. Williams (199 N. Y. 108).

Concur: Cullen, Ch. J., Gray, Werner, Willard Bartlett, Hiscock and Chase, JJ.

109 Supreme Court, Albany County.

ERIE RAILROAD COMPANY, Plaintiff,

against

JOHN WILLIAMS, as Commissioner of Labor of the State of New York, Defendant.

The plaintiff herein having appealed to the Court of Appeals from a judgment entered in the office of the Clerk of the County of Albany on the 11th day of January, 1910, for $95.00 costs, upon an order of the Appellate Divison of the Supreme Court, Third Department, entered in the office of the Clerk of Albany County on the same date, affirming the judgment entered in Albany County Clerk's Office, August 4th, 1909, dismissing the complaint of the plaintiff herein with $73.39 costs: and said Court of Appeals having rendered its judgment in the matter on the 14th day of June, 1910, by which judgment it affirmed with costs the said judgment of the Appellate Division and further ordered that the record of the said cause and the proceedings in the Court of Appeals be remitted to this court to

be proceeded upon according to law; and this court having, by order entered in the office of the Clerk of Albany County on the 25th day of June, 1910, ordered that the judgment of the Court of Appeals herein be made the judgment of this court;

Now, upon motion of Edward R. O'Malley, Attorney-General, attorney for the defendant, it is

Ordered, adjudged and decreed that the judgment of the Court of Appeals herein be, and the same hereby is, made the judgment of this court and that the defendant herein recover of the plaintiff the sum of $127.00 costs of said appeal and that execution issue therefor.

JOHN FRANEY, *Clerk.*

Dated, June 27, 1910.

110 [Endorsed:] Filed Feb. 4, 1910. Court of Appeals of the State of New York. Erie Railroad Company, Plaintiff-Appellant, against John Williams, as Commissioner of Labor of the State of New York, Defendant-Respondent. Case on Appeal. George F. Brownell, Attorney for Plaintiff-Appellant, 50 Church Street, Borough of Manhattan, New York City. Edward R. O'Malley, Attorney-General, Attorney for Defendant-Respondent, Capitol, Albany, New York. Filed June 25th, 1910, Clerk's Office, Albany County, N. Y.

Service of three copies of the within case on Appeal is hereby admitted this 4th day of February, 1910.

EDWARD R. O'MALLEY,
Attorney for Defendant-Respondent.

Let the writ of error issue June 3, 1912.
Bond, $500.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

111 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court upon a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Erie Railroad Company, plaintiff, and John Williams, as Commissioner of Labor of the State of New York, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the

ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
112 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said plaintiff, Erie Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 3d day of June, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

113 UNITED STATES OF AMERICA, *ss:*

To John Williams, as Commissioner of Labor of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of New York, wherein Erie Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles E. Hughes, Associate Justice of the Supreme Court of the United States, this third day of June, in the year of our Lord one thousand nine hundred and twelve.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

114 A copy of the within citation has been received at the office of the Attorney General of the State of New York this 6th day of June, 1912, and service thereof is admitted.

THOMAS CARMODY,
Attorney General.

[Stamped:]Albany County, N. Y., Clerk's Office. Filed Jun- 6, 1912.

115 Know all men by these presents, that we, Erie Railroad Company, as principal, and American Surety Company of New York, as sureties, are held and firmly bound unto John Williams, as Commissioner of Labor of the State of New York, in the full and just sum of Five hundred dollars, to be paid to the said John Williams, as Commissioner of Labor of the State of New York, his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this third day of June, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a Supreme Court of the State of New York, in a suit depending in said Court, between Erie Railroad Company, plaintiff, and John Williams, as Commissioner of Labor of the State of New York, defendant, a judgment was rendered against the said Erie Railroad Company and the said Erie Railroad Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Williams, as Commissioner of Labor of the State of New York, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Erie Railroad Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ERIE RAILROAD COMPANY, [SEAL.]
By F. D. McKENNEY, *Attorney.*
AMERICAN SURETY COMPANY
OF NEW YORK, [SEAL.]
By GEORGE M. BETTIS,
Resident Vice-President.

Attest:

PAUL N. CHERRY, [SEAL.]
Resident Assistant Secretary.

Sealed and delivered in presence of—
H. S. TAYLOR.
H. R. WATKINS.

Approved by—
CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

Filed County Clerk's Office, Albany Co., June 6, 1912.

116 STATE OF NEW YORK,
County of Albany, Clerk's Office, ss:

I, Wm. J. Grattan, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held herein, do hereby certify that attached to the annexed certified transcript of record are the writ of error with allowance thereon; the citation with acceptance of service thereof and the same are the originals thereof; and a copy of the bond on writ of error which I have compared with the original thereof on file in this office and find the same to be a true copy thereof.

In witness whereof I have hereunto set my hand and affixed my official seal this 6th day of June, 1912.

[Seal Albany County, July, 1847.]

WM. J. GRATTAN, *Clerk.*

[Endorsed:] Supreme Court. Erie Railroad Company against John Williams, as Commissioner of Labor, etc.

Endorsed on cover: File No. 23,251. New York Supreme Court. Term No. 274. Erie Railroad Company, plaintiff in error, vs. John Williams, as Commissioner of Labor of the State of New York. Filed June 12, 1912. File No. 23,251.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 274.

ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN WILLIAMS, COMMISSIONER OF LABOR OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

GEORGE F. BROWNELL,
FREDERIC D. MCKENNEY,
Attorneys for Plaintiff in Error.

SUBJECT INDEX.

List of Cases Cited.

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Preliminary Statement.

The Erie Railroad Company, an interstate carrier by steam railroad, and also by car-floats, ferries, and steamship lines, incorporated under the laws of the State of New York, but carrying on business in, between, or among the States of New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Wisconsin, Michigan, and elsewhere, on November 5, 1908, filed its bill in equity in the

Supreme Court of the State of New York, Albany County, against John Williams, Commissioner of Labor of the State of New York, to test, under appropriate provisions of the Constitution of the United States, the validity, particularly of section 10 (now section 11 of Laws of 1909) of chapter 32 of the General Laws of the State of New York, as amended by chapter 442 of the Laws of 1908, being a part of "the Labor Law," and reading as follows:

> "SECTION 10. *When wages are to be paid.*—Every corporation or joint-stock association, or person carrying on business thereof by lease or otherwise, shall pay weekly to each employee the wages earned by him to a day not more than six days prior to the date of such payment. But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employees thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding calendar month."

Correlated sections, more or less pertinent here, read as follows:

> "SECTION 2. Definitions.—The term employee, when used in this chapter, means a mechanic, workingman or laborer who works for another for hire."
>
> "SECTION 9. Cash payment of wages.—

Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the State or any municipal corporation thereof, either as a contractor or subcontractor therewith, shall pay to each employee engaged in his, their or its business, the wages earned by such employee in cash. No such company, person, firm or corporation shall hereafter pay such employees in script, commonly known as store money-orders. * * *"

"SECTION 11. Penalty for violation of preceding sections.—If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of an employee, as provided in this article, it shall forfeit to the people of the State the sum of fifty dollars for each such failure, to be recovered by the factory inspector in his name of office in a civil action; but an action shall not be maintained therefor, unless the factory inspector shall have given to the employer at least ten days' written notice, that such an action will be brought if the wages due are not sooner paid as provided in this article.

"On the trial of such action, such corporation or association shall not be allowed to set up any defense, other than a valid assignment of such wages, a valid set-off against the same, or the absence of such employee from his regular place of labor at the

> time of the payment, or an actual tender to such employee at the time of the payment of the wages so earned by him, or a breach of contract by such employee or a denial of the employment."
>
> "SECTION 30. Commissioner of Labor.—* * * Wherever title of factory inspector is used in article one of this chapter or the title of commissioner of labor statistics in article four thereof it shall be construed to mean the commissioner of labor."

All of the above sections were re-enacted in substance in the Consolidated Labor Law, which took effect February 17, 1909, with the modifications that section 9 became section 10; section 10 became section 11, and section 11 became section 12 of said Consolidated Labor Law.

As so re-enacted the above sections remain substantially as quoted, with the exception that section 11 (now section 12 of the law of 1909) provides that—

> "If a corporation or a joint stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of all its employees, as provided in this article, it shall forfeit to the people of the State the sum of fifty dollars for each such failure, to be recovered by the Commissioner of Labor in his name of office in a civil action."

STATEMENT IN DETAIL.

By its bill the plaintiff, Erie Railroad Company, asserted that it was incorporated and organized under the laws of New York; that it maintains and operates a railroad between various points and places in different States of the United States, and also maintains and operates much floating equipment in and upon the navigable waters of the United States, particularly in and upon such navigable waters as lie between the States of New York and New Jersey, and the navigable waters between the port of Buffalo, New York, and the ports of other States to the westward thereof, and was and is engaged in carrying on interstate commerce by means of said railroad and floating equipment, under and in compliance with tariffs and concurrences in tariffs duly published and filed with the Interstate Commerce Commission (R., 4); that in connection with such operations it employs "upon that portion of its railroad lying east of Meadville, Pennsylvania, upwards of 15,000 men, who were employed wholly within or partially within the State of New York," the greater number of whom render service partly within and partly without said State, and nearly all of whom are employed in the movement of interstate commerce during the greater part of their time of service, and all are so employed during a part of such time, and also several hundred em-

ployees in service upon and engaged in the operation of said floating equipment; that the contracts of employment with many of such employees were made and in the future must be made elsewhere than in New York, "although a part of their service to plaintiff is and will be rendered in the State of New York" (R., 5); that it has long been customary and usual for plaintiff to pay its employees, including those above referred to, monthly, paying to them "prior to or by the 20th day of each month the wages earned during the preceding month;" that by virtue of such established custom since January, 1908, there has existed a contract between the plaintiff and its employees that all such wages shall be paid monthly (R., 6); that under date of October 14, 1908, the defendant Williams, as Commissioner of Labor, had caused to be mailed to plaintiff a letter calling plaintiff's attention to the provisions of section 10 of article I of the Labor Law, as amended by chapter 442, Laws of 1908, which in its amended form requires "that a railroad corporation shall pay the wages due to its employees semi-monthly," and to section 21 of said article, which "imposes upon the Commissioner of Labor the duty of enforcing the requirements of this law," and concluding as follows:

> "A severe penalty is provided for each violation. If you will examine section 11 of article I of the Labor Law, you will find that for every violation there is provided a civil penalty of fifty dollars ($50), and in-

asmuch as a failure to pay the wages of each employee in accordance with the new law would constitute a separate and distinct violation, it will be seen that in the case of each corporation which is guilty of a violation the aggregate penalties will equal the total number of employees multiplied by fifty; in other words, a railroad corporation employing five thousand men, failing to comply with the law, would be liable to an aggregate penalty of two hundred fifty thousand dollars ($250,000) for each time it failed to observe strictly the requirements of section 10 as amended.

"I sincerely hope that the occasion will not arise for me as Commissioner of Labor to exercise the authority conferred upon me in section 11 to sue to recover penalties for failure by railroad corporations to comply with the provisions of the statute herein discussed; but I beg to assure you that I shall not hesitate to perform my full duty in the premises."

Plaintiff further alleged that the enforcement of the laws in question, in so far as the payment of wages to plaintiff's employees engaged wholly or partially in the movement of interstate commerce and not being residents of the State of New York and performing only a portion of their services within that State, will impose upon and subject plaintiff to an increased cost and expense of several thousand dollars each month, and thereby deprive plaintiff of property without due process of law, and by reason of the excessive pen-

alties prescribed for its violation will deprive plaintiff of its constitutional right to defend against such actions, contrary to article III and to sections 8 and 10 of article I, and to section 1 of the 14th Amendment of the Constitution of the United States; and that said law is void because, among other things, it purports to regulate the times of payment of wages of complainant's employees engaged wholly in maritime service upon the navigable waters of the United States (R., 11).

Further alleging and averring that compliance on its part with the semi-monthly payment features of said law would increase its monthly expense accounts by at least five thousand dollars ($5,000) per month, or sixty thousand dollars ($60,000) per annum, and that to such extent at least compliance therewith would directly burden interstate commerce and deprive the company of its property without due process of law, the plaintiff company prayed that the defendant Williams, as Commissioner of Labor, should be enjoined from instituting suits or other proceedings to recover the penalties so provided for failures on the company's part to make semi-monthly payments to its said employees, and for such further and general relief in the premises as equity should require.

Defendant answered, admitting generally the averments of facts contained in said bill, and asserted the constitutional validity of the State Labor Law so assailed.

The facts as to the corporate capacity and interstate character of the company's operations; the extent of its railroad and maritime operations and the number of employees engaged in each of such services; the relative value and importance of its domestic business or commerce wholly within the State of New York compared with its interstate business (the former being less than 10 per cent of the whole, while the latter exceeds one-half of the whole); the customary method of payment of employees engaged in its various services; the fact that the defendant purposed instituting an action against plaintiff "for each failure on its part to pay one or more of its employees in accordance with the Labor Law, irrespective of whether they reside in a State other than the State of New York, or their contract of employment was made in such other State, or whether their services were performed partly within and partly without the State of New York, or whether they are employed wholly or partly in the maritime service," were stipulated by the parties (R., 33-44), and so found by the court (R., 13-16, 15), and but little, if any, real dispute arises with respect thereto.

The trial court, among other things not stipulated by the parties, found (R., 15):

> "That under present economic conditions, the laboring man is natually at a disadvantage in negotiating his employment contract with corporations, owing to the vast number of men from whom the corporations may

select their employees; that if the employees of corporations are paid at infrequent intervals, they are compelled to resort more often to borrowing or to credit for the necessities of life; that if the employees of corporations are paid less frequently they do not receive as much purchasing power in their wages; that if the employees of corporations are paid less frequently they are in greater danger of falling into the mental and moral degradation resulting from a continual condition of indebtedness; that payment of employees of corporations more frequently tends, in a measure, to prevent friction between employee and employer, and thus to prevent industrial disturbance and to promote the peace and prosperity of the whole community; that payment of corporation employees more frequently benefits the large class of retail business men."

There is no evidence to support any of such findings, and to each thereof the plaintiff duly excepted (R., 30, *et seq.*).

Judgment of the trial court went in favor of the defendant and against the company. It was affirmed by the Appellate Division, Third Department, without opinion (Justices Kellogg and Sewall dissenting), and on appeal to the Court of Appeals was again affirmed (Erie R. R. Co. *vs.* Williams, 136 App. Div., 902; 199 N. Y., 525).

From all of the above, as exemplified by the record, it would seem that the trial court upheld the State Labor Law as a valid manifestation of

the police power of the State; the Appellate Division, by three judges to two, affirmed the judgment of the trial court without opinion, hence it is impossible to ascertain from the record its grounds for so doing; while the Court of Appeals, rejecting the police power theory, held the statute to be valid because warranted by the reserved power of the legislature to amend the charters of its so-called domestic corporations. (The opinion, Record, pages 53 to 63, is the opinion delivered by the Court of Appeals in New York Central & H. R. R. Co., 199 N. Y. Reps., 108, 113-127, cited Record, page 63, as basis for judgment in the present case.)

ASSIGNMENTS OF ERROR.

(1) It was error on the part of the State courts, in the face of the various objections urged against The Labor Law in and by plaintiff's bill of complaint, to uphold said law as valid and direct the dismissal of plaintiff's said bill of complaint.

(2) It was error on the part of the Court of Appeals to declare said section 10 of the Labor Law (section 11 of the law of 1909) to be warranted by the reserve power of the State legislature to alter or amend the charters of domestic corporations, and to uphold the same as applied to the Erie Railroad Company and its employees as valid, notwithstanding the applicable provisions of the Constitution of the United States to the contrary.

ARGUMENT.

I.

The Labor Law of New York is repugnant to section I of article XIV of the Constitution of the United States, in that it deprives the company of property, and specifically deprives the company and those of its employees to whom it applies of liberty without due process of law.

The statute deprives the plaintiff of at least five thousand dollars ($5,000) per month (R., 43). It deprives the plaintiff and the employees, who are mechanics, workingmen, or laborers, of liberty to contract as to when wages shall be paid. The question is, whether this is a valid exercise of the right generally conceded on the part of a State, to alter and amend its domestic charters under a reserved power.

The conditions under which State legislatures can validly interfere with the freedom of contract are suggested in Wright *vs.* Hart (182 N. Y., 330, 344), as follows:

> "To justify the State in interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally as distinguished from those of a particular class requires such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals."

In Adair *vs.* United States, 208 U. S., 161, this court declared that a Federal statute which made it an offense for an interstate carrier to discharge an employee because of his membership in a labor organization contravened the prohibitions of the Fifth Amendment of the Federal Constitution, viz., "No person shall be * * * deprived of * * * liberty, or property, without due process of law." In discussing the right of the defendant to employ Coppage, the employee in question, the court said (p. 172):

> "The first inquiry is whether the part of the tenth section of the act of 1898 upon which the first count of the indictment was based is repugnant to the Fifth Amendment of the Constitution declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that amendment. Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject-matter, can be sustained which the law, upon reasonable grounds, forbids as *inconsistent with the public interests* or as *hurtful to the public order* or as *detrimental to the common good*. This court has said that 'in every well-ordered society, charged with the duty of conserving the safety of its members, the

rights of the individual in respect of his liberty may, at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.' Jacobson *vs.* Massachusetts, 197 U. S., 11, 29, and authorities there cited. Without stopping to consider what would have been the rights of the railroad company under the Fifth Amendment, had it been indicted under the Act of Congress, it is sufficient in this case to say that as agent of the railroad company and as such responsible for the conduct of the business of one of its departments, it was the defendant Adair's right—and that right inhered in his personal liberty, and was also a right of property—to serve his employer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interests. It was the right of the defendant to prescribe the terms upon which the services of Coppage would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms offered to him. Mr. Cooley, in his Treatise on Torts, p. 278, well says: 'It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with any one with whom he can make contracts, and if he is wrongfully deprived of this right by others, he is entitled to redress.'

"In Lochner *vs.* New York, 198 U. S., 45, 53, 56, which involved the validity of a State enactment prescribing certain maximum hours for labor in bakeries, and which made it a misdemeanor for an employer to require or permit an employee in such an establishment to work in excess of a given number of hours each day, the court said: 'The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. Allgeyer *vs.* Louisiana, 165 U. S., 578. Under that provision no State can deprive any person of life, liberty or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers existing in the sovereignty of each State in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the State in the exercise of those powers, and with such conditions the Fourteenth Amendment was not designed to interfere. Mugler *vs.* Kansas, 123 U. S., 623; *In re* Kemmler, 136 U. S., 436; Crowley *vs.* Christensen, 137 U. S., 86; *In re* Converse, 137 U. S., 624. * * * In every case that comes before

this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relation to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.' * * *

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. * * * In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land. These views find support in adjudged cases (citing People *vs.* Marcus, 185 N. Y., 257; National Protection Ass'n *vs.* Cummings, 170 N. Y., 315; Jacobs *vs.* Cohen, 183 N. Y., 207; State *vs.* Julow, 129 Missouri, 163; State *vs.* Goodwill, 33 W. Va., 179;

> Gillespie *vs.* People, 188 Illinois, 176; State *vs.* Kreutzberg, 114 Wisconsin, 530; Wallace *vs.* Georgia, C. & N. Ry. Co., 94 Georgia, 732; Hundley *vs.* L. & N. R. R. Co., 105 Kentucky, 162; Brewster *vs.* Miller's Sons & Co., 101 Kentucky, 268; N. Y., &c., R. R. Co. *vs.* Schaffer, 65 Ohio St., 414; Arthur *vs.* Oakes, 63 Fed., 310)."

The conditions under which the legislature, in the exercise of its reserved right to alter and amend corporate charters, may deprive a person (*i. e.*, a corporation) of liberty or property are substantially the same as those which will justify such a deprivation in the exercise of the police power.

In Lord *vs.* The Equitable Life Assurance Society, 194 N. Y., 212, the alteration of the charter was sustained in one aspect and held to be void and invalid in another aspect, and the Court of Appeals of New York there said (p. 227):

> "The power of amendment reserved by the constitution or statutes of a State does not permit interference with property or property rights, because they are protected by the Constitution of the United States."

This is equally true in regard to liberty and the liberty of contract, both of which are protected by the Federal Constitution. In Shields *vs.* Ohio (95 U. S., 319), speaking of the reserved power of the States to alter and amend domestic charters, it was said (p. 324):

> "The power of alteration and amendment is not without limit. The alterations must be reasonable; they must be made in good faith and be consistent with the scope and object of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration. Beyond the sphere of the reserved powers, the vested rights of property of corporations in such cases are surrounded by the same sanctions and are as inviolable as in other cases."

In Johnson *vs.* Goodyear Mining Company, 127 California, 4, the Supreme Court of California said (p. 344):

> "It is said that corporations being the creatures of the State, and deriving their powers from their charters, the same power that created them may alter or amend their charters or deprive them of rights originally given them. This is true as to certain purposes, but the legislature cannot, after creating a corporation, and while it exists, deprive it of the rights guaranteed to it by the Federal Constitution, nor deprive it of its right to resort to the courts of law, nor take its property without due process of law, nor subject it to unequal and oppressive burdens, nor deprive it of the equal protection of the laws. Maine C. R. Co. *vs.* Maine, 96 U. S., 499; Sinking Fund Cases, 99 U. S., 700; Railroad Tax Cases, 13 Fed., 754, 755; Detroit *vs.* Detroit & H. Pl. Road Co., 43 Mich., 140-147.

The following cases illustrate the limitations upon the power of the legislature in such regard and make it clear that the question whether a statute is or is not a valid exercise either of the police power or the power to alter or amend charters is a judicial one not foreclosed by legislative action:

In the Matter of Jacobs (98 N. Y., 98), wherein was involved the constitutionality of "An act to improve the public health, by prohibiting the manufacture of cigars and preparation of tobacco in any form in tenement houses," etc., it was held to be within the province of the court to determine whether the act did or did not relate to the public health, regardless of the legislative declaration, the State court saying:

> "Under the mere guise of police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the legislature is not final or conclusive. If it passes an act ostensibly for the public health, and thereby destroys or takes away the property of a citizen, or interferes with his personal liberty, then it is for the courts to scrutinize the act and see whether it really relates to and is convenient and appropriate to promote the public health. Such a declaration does not conclude the courts, and they must yet determine the fact declared and enforce the supreme law. In Matter of Ryers (72 N. Y., 1), Folger, J., speaking of the Drainage Act then under consideration, says: 'The

> legislature has done no more than the constitution permitted in providing in general terms a way for the promotion and preservation of the public health. It is still for the judiciary to see to it that each occasion presents the necessity for the work, and that the purpose to be reached is public' " (p. 110).

The court, after discussing as a judicial question whether the statute in question tended to promote the health of cigar-makers, found that it did not do so, and said in conclusion:

> "When a health law is challenged in the courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This we have not been able to see in this law, and we must, therefore, pronounce it unconstitutional and void" (P. 115).

In People *vs.* Gillson (109 N. Y., 389): A statute prohibiting the offering of any gift or prize in connection with the sale of an article of food was held unconstitutional as depriving persons of liberty without due process of law.

In Forster *vs.* Scott (136 N. Y., 577): A statute declaring that no compensation shall be allowed to

the owner of land taken for a street for any building erected after the filing of a map of the street was held to be unconstitutional, as depriving the owner of property without due process of law. The court states that the police and other powers of government can only be exercised to promote the public good and are always subject to judicial scrutiny.

In Colon *vs.* Lisk (153 N. Y., 188): A statute providing for the summary seizure of any boat used in interfering with oysters or shellfish belonging to another person was held unconstitutional as depriving a person of liberty and property without due process of law.

In People *vs.* Hawkins (157 N. Y., 1): A statute requiring goods made by convict labor in any penal institution to be labelled "Convict Made" before being offered for sale was held to conflict with and be repugnant to the commerce clause of the Federal Constitution, and as not within the police power; the court, referring to the statute, saying (page 17):

> "It belongs to a class of laws which have become quite common in recent years, all resting largely upon the notion that the important problems involved in the social or industrial life of the people may be solved by legislation. This theory has, no doubt, a certain fascination over some minds, but so long as legislative power is circumscribed

> by the restrictions of a written constitution, a statute like this cannot be sustained by the courts. Whether tested by the Federal or State constitution it is, I think, an invalid law."

In Beardsley *vs.* The N. Y., L. E. & W. R. R. Co. (162 N. Y., 230), a statute requiring railroad companies to issue mileage books was held unconstitutional as to corporations existing at the time of its enactment, as the requirement constituted an illegal invasion of the property rights of such a corporation. The State court follows the decision of this court in Lake Shore and Michigan Southern Ry. Co. *vs.* Smith (173 U. S., 684), wherein it is held that such a statute was not a valid exercise of the police power of the State nor of the power of the State to establish maximum prices for the transportation of persons and property, and that it violated the due process of law clause of the Constitution.

It is difficult to understand why a statute requiring a railroad corporation to issue mileage books at a price should be held unconstitutional as depriving a corporation of property without due process of law, while a statute appropriating at least $60,000 a year of a railroad corporation's property (the additional cost of paying wages twice a month as distinguished from once a month) should not likewise be condemned.

In People ex rel. Rodgers *vs.* Coler (166 N. Y., 1), the section of the Labor Law providing that laborers engaged in public work shall receive the prevailing rate of wages was held invalid and not a bar to the recovery by a contractor from the city of New York of the amount due upon his contract, although he had not paid the prevailing rate of wages. As much of the court's reasoning in that case would seem to be pertinent to the situation presented in the case at bar, we venture to quote therefrom somewhat at length:

> "The right which is conceded to every private individual and every private corporation of the State to make their own contracts and their own bargains is denied to cities and to contractors for city work. * * * The exercise of such a power is inconsistent with the principles of civil liberty" (p. 13). * * *
>
> "Such legislation may invade one class of rights to-day and another to-morrow, and if it can be sanctioned under the Constitution, while far removed in time we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions." * * *
>
> "The power to deprive master and

servant of the right to agree upon the rate of wages which the latter was to receive is one of the things which can be regarded as impliedly prohibited by the fundamental law upon consideration of its whole scope and purpose as well as the restrictions and guaranties expressed" (p. 14). * * *

"When he is not left free to select his own workman upon such terms as he and they can fairly agree upon, he is deprived of that liberty of action and right to accumulate property embraced within the guaranties of the Constitution, since his right to the free use of all his faculties in the pursuit of an honest vocation is so far abridged" (p. 15). * * *

"It was supposed, no doubt, that the law would benefit wage-earners, but it is not clear how it can, if we consider that class of citizens as a body. A law that restricts freedom of contract on the part of both master and servant cannot in the end operate to the benefit of either" (p. 16). * * *

"These conclusions result from principles that have been often stated by this court when paternal legislation of the same character was under consideration" * * * (p. 18).

After referring to decisions of other States, the opinion proceeds as follows:

"In all of them (the decisions referred to) the statutes differing in no essential particular from that now under consideration were held void as in conflict with the constitutional restrictions express or implied. The prominent feature of the dis-

cussion is that the legislation is condemned as an infringement upon the right of the employer and employee to enter into contracts in their own way, and in some of them it was said that such legislation was an insulting attempt to put the laborer under legislative tutelage, which was not only degrading to his manhood, but subversive of his rights as a citizen. The statutes considered all profess to be for the purpose of securing to the wage-earner his rights, but it was shown that they were really subversive of them. The following are a few of the laws thus considered and condemned, and it will be seen that they were all in line with the enactment in question: An act forbidding empoyers from withholding wages from employees engaged in weaving for imperfections in the work (Com. *vs.* Perry, 155 Mass., 117). An act to secure operators in coal mines and certain manufactories the payment of their wages at regular intervals and in lawful money. (Godcharles *vs.* Wigeman, 113 Pa. St., 431; State *vs.* Goodwill, 33 W. Va., 179; State *vs.* Fire Creek C. & C., *id.*, 188.) An act relating to the payment of wages to miners employed upon the basis of the quantity of coal mined. (Ramsey *vs.* People, 142 Ill., 380.)" * * * "An act to provide for payment of wages in money and prohibit the system of truck stores and to prevent deductions from wages except for money advanced. (Forer *vs.* People, 140 Ill., 171.) An act to provide for weekly payment of wages by corporations. (147 Ill., 66.) An act declaring it unlawful for persons engaged in mining to pay wages otherwise than in money. (State *vs.* Loomis, 115 Mo., 307.)"

In People *vs.* Orange County Road Construction Co. (175 N. Y., 84), a statute prohibiting a municipal contractor from requiring more than eight hours' work was held unconstitutional and void, as having no relation to public health, morals or order, and not being a valid exercise of the police power. And to like effect is People *vs.* Grout, 179 N. Y., 417.

In People *vs.* Williams (189 N. Y., 131) a section of the Labor Law forbidding the employment of an adult female in a factory before 6 o'clock in the morning or after 9 o'clock in the evening, was held unconstitutional, as violating the liberty of contract and as an invalid exercise of the police power, the court saying:

> "The courts have gone very far in upholding legislative enactments, framed clearly for the welfare, comfort and health of the community, and that a wide range in the exercise of the police power of the State should be conceded, I do not deny; but, when it is sought under the guise of a labor law, arbitrarily, as here, to prevent an adult female citizen from working at any time of the day that suits her, I think it is time to call a halt. It arbitrarily deprives citizens of their right to contract with each other. The tendency of legislatures, in the form of regulatory measures, to interfere with the lawful pursuits of citizens is becoming a marked one in this country, and it behooves the courts, firmly and fearlessly, to interpose the barriers of their judgments, when invoked to

protect against legislative acts, plainly transcending the powers conferred by the Constitution upon the legislative body."

In Lochner *vs.* New York (198 U. S. 45) this court said:

"It must, of course, be conceded that there is a limit to the valid exercise of the police power of the State. There is no dispute concerning this general proposition. Otherwise, the Fourteenth Amendment would have no efficacy and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself or family? Of course, the liberty of contract relating to labor includes both parties to it. The one

has as much right to purchase as the other to sell labor" (p. 56).

"The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State interfering with their independence of judgment and of action. They are in no sense wards of the State. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act (p. 57).

"The act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exer-

cise of the police power and upon the subject of the health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employees, if the hours of labor are not curtailed" (p. 61).

"The limit to the exercise of the police power in these cases must be this: the regulations must have reference to the comfort, safety, or welfare of society; they must not be in conflict with any of the provisions of the charter; and they must not, under pretence of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations in fact, and not amendments of the charter in curtailment of the corporate franchise." Cooley's Constitutional Limitations, seventh edition, pp. 837 and 838.

As the section of the Labor Law of New York here under consideration deprives plaintiff of both its liberty and its property, it cannot be sustained as a mere alteration of the company's charter or as an appropriate and valid exercise of the police power unless the court can see in the monthly payment system an evil which materially affects adversely the general welfare or the public good, and can also see that the semi-monthly system of payment provided by said law remedies that evil or condition and in and of itself does not constitute an unjust burden upon the employer.

The decisions of the highest courts of certain of the States respecting the constitutionality of State statutes regulating periods of wage payments to employees are conflicting.

In Republic Iron & Steel Company *vs.* State of Indiana (160 Indiana, 379), a statute requiring corporations to pay their employees weekly was held unconstitutional as depriving persons of liberty and property without due process of law; as not a valid exercise of the police power, and as restraining the employees' liberty of contract; which latter consideration it was held that the employer could avail himself of.

In Braceville Coal Company *vs.* State of Illinois (147 Illinois, 66) an act requiring manufacturing, mining, and transportation corporations to pay their employees weekly was held to be unconstitutional as evidencing unreasonable discrimination between corporations; denying the right to employees to contract as to their wages, and as not being warranted under the power to alter, amend, or repeal the charters of a corporation.

In Johnson *vs.* Goodyear Mining Company (127 Cal., 4; 47 L. R. A., 338) an act providing for monthly payment of wages by all corporations was held unconstitutional as class legislation, it being pointed out that corporations can only be classified or segregated from the mass of persons in matters

of difference which justify diverse legislation, and, further, that the act could not be justified under the power to alter and amend charters, because the legislature could not, after creating a corporation, deprive it of property without due process of law, nor subject it to unequal burdens, nor deprive it of the equal protection of the laws.

In Godcharles *vs.* Wegeman (113 Pa. St., 431) an act requiring all persons, corporations, etc., engaged in mining and manufacturing to pay employees in cash and monthly was held unconstitutional as depriving persons who are *sui juris* of the right to make contracts.

In San Antonio and Arkansas P. R. Co. *vs.* Wilson (Texas Court of Appeals, 19 S. W., 910) a statute making railroad companies liable to pay their employees twenty per cent of the amount due them as wages, in addition to such wages, where such companies refuse to pay their indebtedness to their employees within fifteen days of demand, was held unconstitutional as class legislation, it being further held that the payment of wages of employees of railroad companies is not subject to legislative control on the theory that railroads are public agencies, it being a matter of private and not of public interest.

In Toledo, St. L. & W. R. R. Co. *vs.* Long (169 Indiana, 316; 82 N. E., 757) a statute providing that every company, corporation, or association

doing business in the State should pay its employees engaged in manual or mechanical labor at least once a month was held obnoxious to the Fourteenth Amendment of the Federal Constitution as imposing on companies, corporations, and associations burdens not imposed upon individuals.

Some Cases Holding to the Contrary.

In the opinion of the justices *In re* House Bill No. 1230 (163 Mass., 589), a weekly-payment law was sustained as a proper exercise of the police power.

In State *vs.* Brown and Sharp Manufacturing Company (18 R. I., 16)), an act providing for weekly payment of wages by all corporations was held constitutional, as within the power of the State to alter or amend charters, but it will be interesting to note that this opinion also asserts that a corporation is not a person and not entitled to the protection of the Fourteenth Amendment, and that the legislature can limit the power of corporations to contract, if any reasonable purpose is to be subserved thereby.

Much the same doctrine was held in Leep *vs.* St. L. & I. M. R. R. Co. (58 Ark., 407), and in Lawrence *vs.* Rutland R. R. Co. (80 Vt., 370).

In view of the contrariety of view and opinion thus disclosed by the courts of last resort of many States, and in view of the desirability, if not indeed absolute necessity, for the existence of an uniform system of payment of employees to be practiced throughout the entire system of an interstate common carrier, doing business in several States, each State differing more or less from the others in its legislative expressions of policy respecting the contractual relations between employer and employee, it would seem that unless some local evil gravely affecting the public at large or some material portion thereof is shown to inhere in the commonly-accepted system of monthly payment of wages to mechanics, workmen, and laborers employed by interstate carriers which does not inhere in or which can be materially alleviated by the semi-monthly payment of such wages; the silence of the Congress on the subject should be taken as an indication that it intended that the particular matter should go unregulated save only by the economic laws of supply and demand, more or less interfered with as they are by collective bargaining and the operations of unionism. We submit that no such element of evil or oppression is shown to inhere in the monthly system of payment of wages as justifies the invasion by the State legislature of the liberty of contract between employer and employee, particularly when both are engaged in interstate commerce.

In the interest of uniformity of operation, so necessary to the success of every great transportation enterprise whose field of operation is national in scope and character, the power to regulate the relations between such an employer and its employees, if any regulation be necessary, should be reserved to the Congress exclusively.

Robbins *vs.* Taxing District Shelby Co., 120 U. S., 489.

Leisy *vs.* Hardin, 135 U. S., 100.

Gloucester Ferry Co. *vs.* Pennsylvania, 114 U. S., 196.

Simpson *vs.* Shepherd, 230 U. S., 352.

The distinction between the case at bar and cases which are embraced within that great third class of cases pertaining to interstate commerce with respect to which the regulative powers of the Congress and the States are concurrent and that of neither government is exclusive is readily apparent, for it is plain that the effect of The Labor Law of New York cannot be localized, and as intended to be applied to the employees of the Erie Railroad will extend beyond the boundaries of the State and will necessarily work an interference with contractual relations between employer and employee with which neither the State nor its public are at all interested.

It cannot well be said that the requirement to pay many thousand employees located in several States and on board vessels plying the navigable waters of the United States is a matter of merely local concern.

As was said by this Court in Simpson *vs.* Shepherd, 230 U. S., 352, 398:

> "In order to end these evils, the grant in the Constitution conferred upon Congress an authority at all times adequate to secure the freedom of interstate commercial intercourse from State control and to provide effective regulation of that intercourse as the national interest may demand. The words 'among the several States' distinguish between the commerce which concerns more States than one, and that commerce which is confined within one State and does not affect other States. 'The genius and character of the whole government,' said Chief Justice Marshall, 'seems to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a State, then, may be considered as reserved for the State itself.' * * * This reservation to the States manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of government for the assertion of State power in hostility to the exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation

may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere." (Citing cases.)

"The grant in the Constitution, of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the States with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this court as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting legislation." (Citing cases.)

"The principle which determines this classification, underlies the doctrine that the States cannot under any guise impose direct burdens upon interstate commerce. For this is but to hold that the States are not permitted directly to regulate or restrain that which from its nature should be under the control of the one authority and be free from restriction save as it is governed in the manner that the National Legislature constitutionally ordains" (p. 400).

It is stipulated that plaintiff paid its employees on or before the 20th of the month the wages earned during the preceding month (R., 37).

Courts take judicial notice that employees of States, of municipalities, of school boards, are now, and always have been, paid once a month; agricultural laborers are, as a rule, employed and paid by the month; employees of railroads generally are paid once a month.

The system of monthly payments, outside of factories, where weekly payments may be made without burden to the employer, has been practically uniform in this and other countries and the industrial prosperity of this country has long endured under the in general monthly payment system. Rents are uniformly payable monthly, as are also bills for electric light, gas, and those of the butcher, the baker, and the supply men.

The average daily wages paid by the Erie Railroad Company to each of the sixty-nine classes of its employees (including not only mechanics, working men, and laborers, but other employees) is shown in Plaintiff's Exhibit "B" (R., 45 to 47).

It would seem from this exhibit that railway employees are not a dependent class, but that their earnings are sufficient to enable any man of reasonable prudence to buy for cash if he desires so to do.

It is submitted that there is no evil or condition detrimental to the public good caused by the payment of wages monthly not similarly inherent in semi-monthly payments of wages; there is no basis for the interference by the legislature with the right of the employer and the employee to contract as to the time of payment af wages; the statute constitutes a meddlesome interference with the business affairs of this country, such as has been repeatedly condemned by the courts. It is not sufficient that the legislature may have thought that an evil or condition detrimental to the public good existed. It is necessary that the court itself should be able to perceive the existence of both the candition and the evil.

II.

The statute imposes upon the employers to whom it relates a burden that is unjust and a duty which it is impossible to perform.

The stipulation admits in its eighth clause (R., 43, 44) "instances arise where, owing to such unavoidable delays or other circumstances, it is not possible to pay such employees their respective wages within the time specified in The Labor Law." These circumstances include not merely acts of God which might constitute a defense, but the burning or giving way of a bridge, due perhaps to the negligence of an employee; the absence of and

inability to find an employee, and numerous other cases, and yet it is the conceded intention of the defendant to bring suits to recover penalties for such failure to pay (R., 44).

Many of plaintiff's employees are engaged upon moving trains. Unless the pay car stops the movement of trains running in a contrary direction and detains the trains until the wages are paid to the men thereof (a thing which would obviously interfere with the interstate commerce of this plaintiff much more than the stopping of a single train at a single station, a requirement which has been held to be unconstitutional as placing a direct burden upon interstate commerce), or unless the plaintiff permanently keeps for days at a great many stations paymasters with supplies of money sufficient to pay whatever employee may come within reach, it is physically impossible in certain cases for the plaintiff either to pay or to tender to its employees within the specified time the wages earned.

The seventh paragraph of the stipulation of fact (R., 37-43) details the enormous labor imposed upon the operating, accounting, and treasury staff in making up time slips, making up pay rolls, checking them, finding the employees, and paying them, all of which would be doubled under the semimonthly payment system.

III.

The excess cost of paying employees twice a month as distinguished from once a month and the burden of care, labor, and responsibility imposed by the statute constitutes a direct burden upon interstate commerce and violates the commerce clause of the Federal Constitution.

Plaintiff is essentially an interstate carrier (R., 33-35). Interstate commerce is the principal part of its business (R., 35). Every employee during a part of his labor at least is engaged in interstate commerce, or wholly so engaged (R., 36, 37), and a considerable number of its employees are exclusively engaged in interstate commerce upon navigable waters of the United States (R., 34, 35).

In *Foster vs. Master and Warden of the Port of New Orleans* (94 U. S., 246) a statute of Louisiana made it the duty of the master and warden of the port of New Orleans to offer their services to make a survey of the hatches of all sea-going vessels, and provided that it should be unlawful for any other person to make such survey. The Act was held to be unconstitutional, the court saying (p. 247):

> "That the provisions of this Act are regulations of both foreign and interstate commerce is a proposition which requires no argument to support it. They are a clog and a blow to all such commerce in the port to which they relate. Their enactment involves a power which belongs exclusively to Congress, and which a State could not, therefore, properly exercise."

In Moran *vs.* New Orleans (112 U. S., 69) the city of New Orleans passed an ordinance regulating professions, callings and other business, which, among other things, provided that every firm, company or corporation owning and running tow-boats to and from the Gulf of Mexico should pay a license of $500. The act was declared to be unconstitutional as burdening interstate commerce.

In Philadelphia and Southern Steamship Company *vs.* Pennsylvania (122 U. S., 326) the question was whether a State could constitutionally impose upon a steamship company incorporated under its laws a tax against the gross receipts of such company derived from the transportation of persons and property by sea between different States and to and from foreign countries, and the statute involved was held to be unconstitutional as a regulation of interstate commerce, in conflict with the exclusive powers given Congress under the Constitution.

In Illinois Central Railroad Company *vs.* Illinois (163 U. S., 142) it was held that a statute of Illinois requiring an interstate railroad to stop trains at county seats long enough to receive and let off passengers was an unconstitutional hindrance and obstruction of interstate commerce, the court saying (page 154):

> "The State can do nothing which will directly burden or impede the interstate

> traffic of a company or impair the usefulness of its facilities for such traffic."

To like effect are C., C., C. and St. L. Ry. Co. *vs.* Illinois, 177 U. S., 514; Atlantic Coast Line *vs.* Wharton, 207 U. S., 328.

In Galveston, H. & S. A. R. R. Co. *vs.* State of Texas (210 U. S., 217) it is held that a statute of Texas imposing a tax upon railroad companies equal to one per cent of the gross receipts is, as to companies whose receipts included receipts from interstate business, a burden on interstate commerce, and as such violative of the commerce clause of the Constitution.

IV.

The statute violates the Fourteenth Amendment of the Constitution of the United States, and is unconstitutional in that it denies to the employees of the Erie Railroad Company the equal protection of the laws.

Assuming that there exists something detrimental to the public good in the monthly payment of wages as distinguished from semi-monthly payment, and that this something so materially and sensibly affects the general public interest as to justify legislative interposition, then the legislature in applying its remedy must not deny to those affected the equal protection of the laws, and must not make an arbitrary or unequal classifica-

tion of the employers upon whom it will place the burden, nor of the employees who are to receive the alleged benefit of the remedy.

The test as to what constitutes arbitrary classification is clearly stated in Kane *vs.* Erie R. R. Co., 133 Fed., 681, 686, as follows:

> "A valid classification for legislative purposes 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis.' (Gulf, Colo. & Santa Fe R. R. Co. *vs.* Ellis, 165 U. S., 150; Billings *vs.* Illinois, 188 U. S., 97, 102.) It must be grounded upon 'a reason of a public nature' and 'the act must affect all who are within the reason for its enactment.' (Judge Shauck, in Miller *vs.* Crawford, 70 Ohio St., 207, 214.)"

What differences with respect to the necessity for the more or less frequent payment of wages exist between mechanics, workingmen and laborers employed by steam surface railroads and other employees of such corporations, such as clerks, draughtsmen and station agents, which justify such arbitrary selection between classes of employees as is disclosed by the statute here in question?

The trial court justified the legislation by certain findings which rest for support solely in economic or sociologic disputation, for no evidence was introduced in such respect. Summarized,

such findings are that payment twice a month tends to secure to those employees the full value or purchasing power of their wages (If this be true as to mechanics, workingmen or laborers, is it not equally true as to employees who are not either mechanics, workingmen nor laborers?); that it tends to better the economic, physical and mental condition of these employees (If this be true, is it not equally true as to employees who are neither mechanics, workingmen nor laborers?); that the laboring man is naturally at a disadvantage in negotiating his contract of employment with corporations owing to the vast number of men from whom the corporations may select their employees (If this be true, is it not equally true of those who are neither mechanics, workingmen nor laborers? Is it not true of accountants, of clerks, of ticket agents, of stenographers, etc.?); that they are compelled to resort more often to borrowing or to credit for the necessities of life (If this be true as to mechanics, workingmen or laborers, is it not equally true of the other class of employees?); that if they are paid less frequently they do not receive as much purchasing power in their wages (If true of mechanics, workingmen or laborers, it is true of other employees of corporations; they are in greater danger of falling into the mental and moral degradation resulting from a continual condition of indebtedness); that payment more frequently benefits a large class of retail business men who supply employees with the necessities of

life (Does it not apply to retail business men who sell to employees who are neither mechanics, workingmen nor laborers?)

Inspection of plaintiff's exhibit B (R., 45-47) shows that during the fiscal year ending June 30, 1908, there was paid to employees composing the first class, to wit: clerks in the division superintendents' offices, about $112,000; the total number of days worked by this class being over 53,000; the average compensation per day being $2.09.

In the second class, clerks in the division engineers' offices, over 10,000 days' work was done, over $21,000 in money paid, and the average daily wage was $1.99.

In the sixth class, passenger agents, 17,000 days' work was done, and more than $35,000 in money paid, an average daily wage of $2.10.

In the eighth class, freight and passenger agents, 74,000 days' work was done, and more than $132,000 paid, the average daily wage being $1.78.

In the eleventh class, clerks, passenger station, more than 20,000 days' work was done, more than $37,000 paid, and the average daily wage was $1.82.

In the twelfth class, clerks at freight stations, more than 340,000 days' work was done, and more than $601,000 in money paid, and the average daily wage was $1.77.

In the thirteenth class, clerks, freight and passenger station, more than 44,000 days' work was done,

more than $61,000 in money paid, and the average daily wage was $1.38.

These classes cover employees who are neither mechanics, workingmen, nor laborers.

Now contrast the above with class fifty-ninth, boilermakers, whose daily wage was $2.93; with class fifty-six, machinists, whose daily wage was $2.89; with class sixty-eight, bridgemen, whose daily wage was $3.10; with class forty-nine, dock builders, whose daily wage was $2.40; with class forty-eight, painters, whose daily wage was $2.36; with class forty-five, carpenters, whose daily wage was $2.43. These latter employees would seem to be the mechanics, workingmen, or laborers to whom the statute was intended to apply. Plainly there is a very large and substantial class of railway employees who are not mechanics, workingmen, or laborers, who receive less wages than are paid to the company's mechanics, workingmen, and laborers.

Mechanics, workingmen, and laborers are not a dependent class as compared with other railway employees.

The trial court found (R., 15) that the "laboring man is naturally at a disadvantage in negotiating his employment contract with corporations."

The court will take judicial notice of the Brotherhood of Locomotive Engineers; the Order of Rail-

way Conductors; the Brotherhood of Locomotive Firemen; the Brotherhood of Railroad Trainmen, which includes baggage-masters and all men engaged in the operation of trains, whether upon the road or in yards; the American Federation of Labor, with its allied branches, including freight handlers' union, blacksmiths' union, boiler-makers' union, machinists' union, painters' union, carpenters' union, printers' union, carmen's union, including car repairers and others, branches which cover every class of employees to whom this suit applies. All of these organizations have their committees and officers, who represent them in the making of contracts of employment, often representing them in securing legislation drafted by their own counsel in their own interests. If there be a dependent class of railway employees, that class consists of the unorganized but great body of clerks, men in a subordinate capacity in the traffic and accounting departments, ticket agents, etc., who deal with their employer individually.

For illustration, a machinist (class 56, R., 47), who earns $2.89 a day, lives in the house adjoining a clerk in the division engineer's office (class 2), who earns $1.99 a day. Each has the same family: the two men are similarly situated in respect to the burden of supporting their families, and one needs the full purchasing power of his wages as much as the other. Upon what ground can it be that the machinist shall be paid twice a month while the clerk shall be paid less frequently?

The classification made by the statute is arbitrary.

In Bedford Quarries Company *vs.* Bough (Supreme Court of Indiana (168 Ind., 671; 80 N. E., 529), a statute provided that every railroad or other corporation, except municipal, operating in that State, should be liable for damages for personal injuries under the conditions named in the statute. In holding the statute invalid the court said (p. 530):

> "Employees of individuals and copartnerships are excluded from the benefit of its provisions. It gives a right of action to an employee for injuries received while in the service of a private corporation in certain cases, but denies the employee of an individual or copartnership engaged in the same business a right of action for an injury arising from the same cause and under the same conditions. It imposes new burdens upon private corporations, while natural persons carrying on a like business and under like circumstances and conditions are left without any such burden. The right of action is made to depend upon the character of the employer and not upon the character of the employment."

In Toledo, St. L. & W. R. Co. *vs.* Long (169 Ind., 316; 82 N. E., 757), where the statute under consideration read as follows:

> (1) "That every company, corporation or association now existing or hereafter organ-

> ized and doing business in this State, shall, in the absence of a written contract to the contrary, be required to make full settlement with, and full payment in money to, its employees, engaged in manual or mechanical labor, for such work and labor done or performed by said employees for such company, corporation or association at least once in every calendar month of the year."
>
> (2) "If any company, corporation or association shall neglect to make such payment, such employee may demand the same of said company, corporation or association, or any agent of said company, corporation or association, upon whom summons might be issued in a suit for such wages, and if said company, corporation or association shall neglect to pay same for thirty days thereafter, said company, corporation or association shall be liable to a penalty of one dollar for each succeeding day, to be collected by such employee in a suit (together with reasonable attorney's fees in said suit) for wages withheld; *Provided,* That said penalty shall in no instance exceed twice the amount due and withheld."

the court, holding the act to be unconstitutional, said (p. 758):

> "It will be observed that said sections, so far as they affect employers, only apply to 'every company, corporation or association' and, so far as their employees are concerned, only apply to those 'engaged in mechanical or manual labor for every company, corporation or association,' but deny the right to such of their employees as are not 'en-

> gaged in manual or mechanical labor.' Employees of an individual, although engaged in manual or mechanical labor for such individual, are excluded from the benefit of said sections of the statute. They give the right to recover penalties and attorney's fees to a certain class of employees of companies, corporations, and associations, but deny such right to the same class of employees of an individual engaged in the same business under the same conditions. They impose new burdens upon 'every company, corporation and association,' doing business in the State, while an individual engaged in like business under like circumstances and conditions is left without any such burden."

In Lawrence *vs.* Rutland Railroad Co. (80 Vt., 370); State of Rhode Island *vs.* Brown & Sharp Manufacturing Company (18 R. I., 16), and *In re* House Bill No. 1230 (163 Mass., 589), wherein statutes fixing the time of payment of wages were held to be constitutional, the statute in each case included the entire body of employees of the person or corporation upon whom this burden was placed.

In Cotting *vs.* Kansas City Stock Yards Company (183 U. S., 79), in considering the equal protection of the law clause of the Constitution, this court said (p. 108):

> "In The State *vs.* Haun, 61 Kansas, 146, there was presented for consideration a statute providing for the payment of the wages of laborers in money, coupled with this provision in section 4:

" 'SEC. 4. This act shall apply only to corporations or trusts, or their agents, lessees or business managers, that employ ten or more persons.'

"The act was held unconstitutional. After referring to an alleged defect in the title, the court said (p. 152):

" 'We have no hesitation in saying that if this statute had, without defect as to title, clearly and in express terms amended corporate charters, retaining the section classifying corporations to which it was applicable by the number of men in their employ, it would be obnoxious to the Fourteenth Amendment to the Constitution of the United States.'

"Again, on pages 153, 154:

" 'The obvious intent of the act is to protect the laborer and not to benefit the corporation. Why should not the nine employees who work for one corporation be equally protected with the eleven engaged in the same line of employment for another corporation? If such law is beneficial to wage earners in the one instance, why not in the other? The nine men lawfully paid for their labor in goods at a truck store might with much reason complain that the protection of the law was unequal as to them, when they saw eleven men paid in money for the same service performed for another corporation engaged in a like business. Such inequality destroys the law. In the instance cited, two of the eleven men might quit the employment of the company for which they worked and by this act alone make a method of payment by the corporation lawful which

was unlawful while the eleven were employed. The criminality or innocence of an act done ought not to depend on the happening of such a circumstance. Equal protection of the laws means equal exemption with others of the same class from all charges and burdens of every kind. * * * A classification of the kind attempted makes a distinction between corporations identically alike in organization, capital and all other powers and privileges conferred by law. It is arbitrary and wanting in reason. The act in question is class legislation of the most pronounced character.' "

* * * * * * *

"We think, therefore, that the principle of the decision of the Supreme Court of Kansas in State *vs.* Haun (*supra*), is not only sound, but is controlling in this case, and that the statute (a statute which discriminated between stock-yards receiving less than those receiving more than 100 head of cattle per day) must be held unconstitutional as in conflict with the equal protection clause of the Fourteenth Amendment" (p. 112).

In *Connolly vs. Union Sewer Pipe Company*, 184 U. S., 540, it is said:

"The equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances' (Missouri *vs.* Lewis, 101 U. S., 22, 31). * * * No impediment should be interposed to the pursuits of any one except as applied to the same pursuit by others under

like circumstances. No greater burdens should be laid upon one than are laid upon others in the same calling and condition. * * * (Barbier *vs.* Connolly, 113 U. S., 27, 31). This language was cited with approval in Yick Wo *vs.* Hopkins (118 U. S., 356, 369), in which it was also said that 'the equal protection of the laws is a pledge of the protection of equal laws.' In Hayes *vs.* Missouri, 120 U. S., 68, 71, we said that the Fourteenth Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, 'shall be treated alike, under like circumstances and considerations, both in the privileges conferred, and in the limitations imposed,' 'Due process of law and the equal protection of the laws,' this court has said, 'are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government' (Duncan *vs.* Missouri, 152 U. S., 377, 382). Many other cases in this court are to the like effect."

In *Gulf, C. and S. F. Ry. Co. vs. Ellis*, 165 U. S. 150, 158:

"But a mere statute to compel the payment of indebtedness does not come within the scope of police regulations. The hazardous business of railroading carries with it no special necessity for the prompt payment of debts."

V.

It is respectfully submitted that the judgment of the Supreme Court of New York herein complained of should be reversed and set aside and the cause remanded for further proceedings not inconsistent with law.

GEORGE F. BROWNELL,
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Attorneys for Plaintiff in Error.

[25018]

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 274.

ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

against

JOHN WILLIAMS, AS COMMISSIONER OF LABOR OF THE STATE OF NEW YORK, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR DEFENDANT IN ERROR.

THOMAS CARMODY,
Attorney-General.

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WILBER W. CHAMBERS,
Attorneys for Defendant in Error.

SUBJECT INDEX.

List of Cases.

Supreme Court of the United States.

ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN WILLIAMS, AS COMMISSIONER OF LABOR OF THE STATE OF NEW YORK, DEFENDANT IN ERROR.

October Term, 1913.

No. 274.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

This action was brought here on a writ of error granted by Mr. Justice Hughes, after judgment had been rendered in the Supreme Court of the State of New York, in favor of the defendant in error upon a remittitur from the Court of Appeals of the State of New York, that being the highest court of law in said State. (Record, fols. 111–112.)

The judgment dismissed plaintiff's complaint, with costs. (Fols. 49–50, 109.)

The action was brought in the Supreme Court of the State of New York by the plaintiff in error to restrain the defendant, as State Commissioner of Labor of New York State, from instituting actions to recover penalties for non-compliance with those provisions of the New York State Labor Law, which re-

quire the plaintiff in error to pay its employees semi-monthly and in cash, and in that way test the constitutionality of those sections of that law.

Upon the trial in the Supreme Court judgment was given for the defendant in error, dismissing the complaint, with costs. The plaintiff in error then appealed from the judgment of the Supreme Court to the Appellate Division of the Supreme Court, Third Judicial Department, where the judgment of the Trial Term was affirmed, with costs. Plaintiff in error took a further appeal to the Court of Appeals of the State of New York, where the judgment of the Supreme Court was unanimously affirmed, with costs. The opinion of the court was written by Judge Willard Bartlett. (Fol. 107.) That court sustained the statute upon the ground that it is a legitimate exercise by the State Legislature of its power to amend corporate charters.

THE STATUTES INVOLVED.

The statutes, the constitutionality of which is assailed in this action, are sections 10, 11 and 12 of the present Labor Law of the State of New York. These statutes are set forth in full in the decision of the trial court (fols. 23-26), and for convenience we quote them here.

Section 10 provides for cash payment of wages and reads in part as follows:

> "Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or municipal corpora-

tion thereof, either as a contractor or a subcontractor therewith, shall pay to each employee engaged in his, their or its business the wages earned by such employee in cash."

Section 11 provides all corporations except railroads shall pay wages weekly, and *railroad corporations shall pay them semi-monthly.* The section is set forth as follows:

> "Sec. 11. When wages are to be paid.—Every corporation or joint stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employee the wages earned by him to a day not more than six days prior to the date of such payment. But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employees thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding calendar month."

Section 12 provides the civil penalty for violation of these sections as follows:

> "If a corporation or joint stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of all its employees, as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the commissioner of labor in the name of office in a civil action."

These laws are developments from previous enactments. The first statute in New York prescribing cash payment of wages, seems to have been enacted by chap-

ter 381 of the Laws of 1889. This was incorporated finally into the first Labor Law of the State of New York as section 9 (chapter 415, Laws of 1897), without change in substance, and is now section 10 of our State Labor Law, from which we have quoted. There has been some amendment of its terms, but its essential provisions are still the same.

The first law of this State which we have been able to find prescribing the intervals of payment of wages is chapter 388 of the Laws of 1890 of the State of New York. This provided generally that every corporation therein enumerated should pay its employees weekly. Steam surface railroads were excepted.

By chapter 717 of the Laws of 1893 of the State of New York the provision was extended to the agents, lessees or other persons conducting the business of such corporations.

By chapter 791 of the Laws of 1895 of the State of New York, the provision was added requiring steam surface railroads to pay their employees monthly.

Prior to the amendment of 1909 section 12 of the Labor Law, which we have quoted, imposed a penalty for each failure to pay the wages of employees, and further provided that no action to recover a lost penalty could be maintained unless written notice at least ten days previously had been served by the factory inspector on the employer. There was also a limitation of the defenses a corporation could set up in such an action.

The amendment of 1909 eliminated the requirement of notice and the limitation of defenses to the action, and provided that the penalty should accrue upon the failure "to pay the wages of all its employees." There can now be but one penalty, which is incurred by the corporation each time it neglects to pay its

employees, rather than cumulative penalties for each employee.

But although these laws in substance have existed since 1889 and 1890 respectively, their constitutionality has not, up to the time this action was brought, been questioned in any court, so far as we have been able to discover.

FACTS FOUND BY THE TRIAL COURT.

The principal facts were stipulated by the parties. (R., pp. 33–44.) Additional facts found were common knowledge, of which the trial court took judicial notice. (R., fol. 26.)

Plaintiff in error failed to show that there were any contracts between it and its employees entered into prior to May 20, 1908 (the statute requiring payment of plaintiff in error to pay its employees twice a month, went into effect after this date and on October 1, 1908), containing a definite term of employment under which the plaintiff in error agreed to pay its employees monthly or at any other definite intervals. (R., fols. 25–26; VII., Finding of Fact.)

The trial court found, among other things, that requiring plaintiff in error to pay its employees wages in cash and twice a month,

(a) Secured to them the full value or purchasing power of their wages;

(b) Had a tendency to better their economic, physical and mental conditions;

(c) Relieved them somewhat of borrowing or asking credit;

(d) Increased the purchasing power of their wages;

(e) Tended to prevent friction between them and their employer, and industrial disturbances generally;

(f) Promoted peace and prosperity to the whole community. (R., p. 15.)

There was no claim made by plaintiff in error that Congress had undertaken to act upon the subject-matter involved.

EFFECT OF THE STATUTES ON PLAINTIFF IN ERROR.

The real complaint which plaintiff in error made in the State courts against these laws was, that it would increase its expense. It was stipulated for the purposes of the trial that this increased expense would be about $5,000 monthly. (R., fol. 75.)

It was not shown that any impairment of efficiency resulted from this increased expense.

There will really be no material pecuniary monthly loss, for in withholding the wages of its employees prior to the passage of the acts for a month, plaintiff in error secured to itself the benefit of the interest during that period. Even under the system of semi-monthly payment the amount of interest on its payroll $20,048,316.07 per year (pp. 20–22), which plaintiff in error would save twice a month, is a large sum, running into the thousands. This is interest on money already earned by its employees and which under a system of weekly wage it would lose.

In the preparation of this brief we have not had the benefit of the brief of plaintiff in error in this court, for it has served none to the time of printing this brief. We have for that reason necessarily relied somewhat on the grounds discussed by plaintiff in error in its brief and argument in the Court of Appeals.

The main grounds on which plaintiff in error attacks these statutes are:

(1) That they deprive plaintiff and its employees of liberty and property without due process of law.

(2) That they deprive plaintiff and its employees of the equal protection of the law.

(3) That they interfere with interstate commerce and are therefore invalid.

The defendant in error asks that the judgment of the State court be affirmed or, in the alternative, the writ of error be dismissed upon the following grounds:

(1) That the laws in question are valid as a legitimate exercise by the Legislature of the State of New York of the reserved power to amend corporate charters.

(2) That they are a proper exercise by the State of New York of its police power.

POINTS.

I.

THE FUNDAMENTAL PRINCIPLES WHICH GUIDE THE ACTION OF THE COURTS IN REVIEWING ACTS OF THE STATE LEGISLATURE IS THAT THE COURTS WILL NOT OVERTURN ENACTMENTS OF THE LEGISLATURE OF A STATE UNLESS THE CLEAREST AND GRAVEST REASONS EXIST FOR SO DOING.

Legislative acts will be presumed to be constitutional, and if there is any doubt at all such doubt will be resolved in favor of the validity of legislative acts. We cite for the convenience of the court at the outset these decisions which illustrate the attitude of this court in passing upon the validity of acts of State Legislatures.

Sinking-Fund Cases, 99 U. S. 700.
Sweet v. *Rechel*, 159 U. S. 380.
Home Telephone Co. v. *Los Angeles*, 211 U. S. 265, 281.

In the *Sinking-Fund cases* (*supra*), Chief Justice Waite said (p. 718):

> "Every possible presumption is in favor of the validity of a statute and this continues until the contrary is shown beyond a rational doubt."

In the case of *Sweet* v. *Rechel* (*supra*), the constitutionality of an act of the Legislature of the State of Massachusetts was involved. In that case Mr. Justice Harlan, who delivered the opinion of the court, wrote (p. 392):

> "But in determining whether the legislature in a particular enactment has passed the limits of its constitutional authority, every reasonable presumption must be indulged in favor of the validity of such enactment. It must be regarded as valid, unless it can be clearly shown to be in conflict with the constitution. It is a well-settled rule of constitutional exposition, that if a statute may or may not be, according to circumstances, within the limits of legislative authority, the existence of the circumstances necessary to support it must be presumed."

In *Home Telephone Co.* v. *Los Angeles*, (*supra*), this court had before it an ordinance of the City of Los Angeles which fixed the rates to be charged for telephone service. The opinion of the court was delivered by Mr. Justice Moody, and he again called attention to this rule, which is stated in the other two cases, in the following words (p. 281):

> "Every presumption should be indulged in favor of the constitutionality of the legislation."

II.

THESE STATUTES ARE A PROPER EXERCISE OF THE RESERVED POWER TO AMEND CORPORATE CHARTERS, CONTAINED IN THE CONSTITUTION OF THE STATE OF NEW YORK.

The plaintiff in error is a corporation created and existing under and by virtue of the laws of the State of New York. (R., fols. 4, 58.)

The Revised Statutes, passed in 1827, provide that:

> "The charter of every corporation that shall hereafter be granted by the legislature shall be subject to alteration, suspension and repeal in the discretion of the legislature." (1 R. S., N. Y. State, 600, sec. 8.)

The Constitution of the State of New York, adopted in 1846 and also as revised in 1894, provided:

> "Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be obtained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed." (Const. of N. Y. State, art. VIII, sec. 1.)

A. THE CONSTITUTIONALITY OF THESE STATUTES MAY BE UPHELD AS TO CORPORATIONS UNDER THIS RESERVED POWER OF AMENDMENT.

The most recent decision on this head is that of *Berea College* v. *Kentucky*, 211 U. S. 45. The statute there involved forbade "any person, corporation or association of persons to maintain or operate any

college" where whites and blacks were taught together. This court upheld the validity of that act as to the plaintiff on the ground that it was a legitimate exercise of this reserved power.

The fact that these statutes do not in terms purport to amend a corporate charter is also immaterial. Mr. Justice Brewer, in the case last cited on this point, said (p. 57):

> "The language of the statute is not in terms an amendment, yet its effect is an amendment, and it would be resting too much on mere form to hold that a statute which in effect works a change in the terms of the charter is not to be considered as an amendment, because not so designated. The act itself, being separable, is to be read as though it in one section prohibited any person, in another section any corporation, and in a third any association of persons to do the acts named. Reading the statute as containing a separate prohibition on all corporations, at least, all state corporations, it substantially declares that any authority given by previous charters to instruct the two races at the same time and in the same place is forbidden, and that prohibition being a departure from the terms of the original charter in this case may properly be adjudged an amendment."

The ground on which the constitutionality of the laws is attacked is that it deprives the corporations of certain rights. If those rights are expressly subject to this particular kind of amendment, the law does not impair them whether it is in terms an amendment or not.

It is therefore clear that in the present instance the validity of the statutes here in question may be sus-

tained as an exercise of the reserved power to amend corporate charters.

> See also *Leep* v. *Railway Company*, 58 Ark. 407.

This power of the State to amend corporate charters has been sustained by many authorities.

> *Adirondack Railway Co.* v. *New York State*, 176 U. S. 335.
> *New York & New England Railroad Company* v. *Bristol*, 151 U. S. 556, p. 567.
> *People* v. *O'Brien*, 111 N. Y. 1.
> *Greenwood* v. *Freight Co.*, 105 U. S. 13.
> *Lord* v. *Equitable Life Assurance Co.*, 194 N. Y. 212.

In *Adirondack Railway Co.* v. *New York State* (*supra*), a railroad company had not made use of its right to condemn lands for the extension of its road. New York State thereafter took the lands in question for its forest preserve. It was held that under the State's power to amend corporate charters the State could retract from the railroad company the right of eminent domain over the lands the railroad might so have taken for extension.

Chief Justice Fuller, writing the opinion of the court, said (p. 344):

> "Undoubtedly the power to amend or repeal cannot be availed of to take away property already acquired or to deprive a corporation of the fruits already reduced to possession of contracts lawfully made. But the capacity to acquire land by condemnation for the construction of a railroad attends the franchise to be a railroad corporation, and when unexecuted cannot be held to be in itself a vested right surviving

> the existence of the franchise or an authorized circumscription of its scope. (*People* v. *Cook*, 148 U. S. 397; *Pearsall* v. *Great Northern Railway Co.*, 161 U. S. 646; *Bank of Commerce* v. *Tennessee*, 163 U. S. 416, 424.)"

In *New York & New England Railroad Co.* v. *Bristol* (*supra*), a railroad corporation was compelled by the reserved power that the State had over charters to remove various grade crossings at its own expense. This the court said was not a violation of the Fourteenth Amendment to the United States Constitution. Chief Justice Fuller, writing for the court, said (p. 567):

> "And also that 'a power reserved to the legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it, and which the legislature may deem necessary to secure either that object or any public right.'"

In *People* v. *O'Brien* (*supra*), and in *Greenwood* v. *Freight Co.* (*supra*), railroad charters were expressly repealed under this reserved power.

In the case of *Lord* v. *Equitable Life Assurance Society* (*supra*), the charter of a life insurance company was so changed as to allow policyholders to vote for directors. In writing the opinion for the court, Judge Vann said (p. 237):

> "The principle established by the authorities seems to be that the legislature under its reserved power may amend any charter in any respect that is not fundamental when the object of the corporation and property acquired by it are considered. Granting that it may not convert a corporation into something entirely

> foreign to the object for which it was created, such as turning an insurance company into a railroad company for instance, still it can regulate investments, methods of administration and details of procedure in the interest of the public and of all concerned. The public is interested in the proper management of a company with such enormous assets as the defendant possesses, because, if for no other reason, those assets were mainly derived from the public."

There is but a single limitation to this general rule of the power to amend charters by the State enacted under its sovereign power, and that is, the power may not be exercised to destroy property or rights guaranteed by the Fourteenth Amendment of the United States Constitution, and by similar provisions of State Constitutions. This limitation is discussed in the cases that we have cited. The rule is perhaps more forcibly stated in the case of *St. Louis, Iron Mountain, etc., Railway* v. *Paul*, 173 U. S. 404, at 408, where Chief Justice Fuller, writing for the court, said:

> "The power to amend 'cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made,' Waite, C. J., *Sinking-Fund cases*, 99 U. S. 700; but any alteration or amendment may be made 'that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, and that the legislature may deem necessary to secure either that object or other public or private rights,' Gray, J., *Commissioners* v. *Holyoke Water Power Company*, 104 Mass. 446, at 451; *Greenwood* v. *Freight Co.*, 105 U. S. 13; *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347."

This case also illustrates the power of the State to secure a public benefit (the payment to a laborer of all that is due him, when discharged) through the exercise of this reserved power and not through the power of the general police. This power may be exercised even without reasons of public benefit so long as the limitation last mentioned is observed. *People* v. *O'Brien* (*supra*).

The principle is also recognized in other decisions. In *State* v. *Brown & Sharpe Mfg. Co.*, 18 R. I. 16 (17 L. R. A. 856), it was specifically held that although the act in question made no reference in direct terms to charters or to public laws relating to corporations in general, nevertheless, since it was sufficiently comprehensive to include the class, it would be regarded as a proper exercise of the reserved power.

To repeat, the validity of these statutes were properly enacted as an exercise of the reserved power of New York State to amend corporate charters, and the limitation to the general rule to do that has no application here, for no property is destroyed nor any rights guaranteed by the Fourteenth Amendment of the United States Constitution interfered with.

B. THE RESERVED POWER TO AMEND CORPORATE CHARTERS IS MUCH GREATER THAN THE POLICE POWER.

Historically, the reservation of the power to amend corporate charters by the Legislature was the result of public alarm and protest caused by the decision of the United States Supreme Court in the famous Dartmouth College case (*Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518). In that case it was held that the grant of a corporate charter by a State to a corporation constituted a contract which was inviolable at the hands of the State Legislature because pro-

tected by the Federal Constitution. It was to avoid the effect of this decision that the power to amend such charters was reserved. It is clear that entirely apart from such power, the police power of the State could not be limited by such a contract any more than by any other contract. If, for instance, a certificate of incorporation provided that the corporation might carry on a business clearly detrimental to public health, there is no doubt that the Legislature could prevent the transaction of such business, even in the absence of reserved power to amend the corporate charter.

In *New York & New England R. R. Co.* v. *Bristol*, 151 U. S. 556, the rule is reiterated that the police power is not limited by those provisions of the Federal Constitution prohibiting States from passing laws impairing the obligations of contracts. The opinion of the court upon this point is in part as follows (p. 567):

> "It is likewise thoroughly established in this court that the inhibitions of the Constitution of the United States upon the impairment of the obligation of contracts, or the deprivation of property without due process or of the equal protection of the laws, by the States, are not violated by the legitimate exercise of legislative power in securing the public safety, health, and morals. The governmental power of self-protection cannot be contracted away, nor can the exercise of rights granted, nor the use of property, be withdrawn from the implied liability to governmental regulation in particulars essential to the preservation of the community from injury. *Beer Co.* v. *Massachusetts*, 97 U. S. 25; *Fertilizing Company* v. *Hyde Park*, 97 U. S. 659; *Barbier* v. *Connolly*, 113 U. S. 27; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 650; *Mugler* v. *Kansas*, 123 U. S. 623; *Budd* v. *New York*, 143 U. S. 517."

In other words, the Dartmouth College case did not hold that the police power of the State could not be exercised against corporations, but merely that in the absence of such power the Legislature could not in any way alter the original certificate. Any reserved power to amend such certificate, therefore, is an addition to and extension of this police power.

Likewise, in the decisions frequently made by the courts of the extent of this reserved power to amend, the tests ordinarily applied to determine the propriety of an assumed exercise of the police power, are not employed. It is held that under this reserved power, the corporation cannot be deprived of its property or of existing contracts. This seems to be the only limitation placed by the courts upon the exercise of the power. The franchise to be a corporation may be entirely taken away, and the Legislature may also prescribe the conditions and terms upon which it will allow the corporation to live and exercise such franchise. It may enlarge or limit its powers, and increase or limit its burdens. It cannot subvert the purpose for which the corporation was formed by changing an insurance corporation to a railroad company, for instance, but short of that it would seem to have the right to make any regulation which in its judgment is desirable, so long as it does not deprive the corporation of property or impair the obligation of existing contracts.

Mayor v. *Twenty-third St. Railroad Co.*, 113 N. Y. 311, 317.

Lord v. *Equitable Life Assurance Society*, 194 N. Y. 212.

C. THE PROVISIONS OF THE LABOR LAW HERE ATTACKED ARE A LEGITIMATE EXERCISE OF THE RESERVED POWER TO AMEND BECAUSE THEY RELATE SIMPLY TO METHODS OF INTERNAL ADMINISTRATION TO BE FOLLOWED BY THE CORPORATIONS AND DO NOT DEPRIVE THE CORPORATIONS OF ANY VESTED RIGHTS OR SUBVERT THE PURPOSES FOR WHICH THEY WERE FORMED.

1. *Regulation of methods of administration or internal management are included within the scope of this reserved power over corporate charters.*

One of the latest decisions in New York State bearing upon the existence of this power is *Lord* v. *Equitable Life Assurance Society*, 194 N. Y. 212. Here the validity of that section of the Insurance Law which gave to the directors the right to mutualize life insurance companies so as to allow policyholders to vote for directors, was attacked. In an exhaustive opinion by Judge Vann, in the main part of which the entire court concurred, this statute was held constitutional as a valid exercise of the reserved control over corporate charters. After a very careful examination of the decisions and the statutes, beginning with the decision of the United States Supreme Court in *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, the opinion sums up the extent and scope of this power as follows (pp. 232, 237):

> "We think the act of 1906, so far as it is now before us, is a valid exercise of legislative power, forbidden by neither State nor Federal Constitution. The authorities relied upon are not directly in point for the situation is without precedent, but it is clear that the tendency of authority, both state and national, is to hold that the legislature has wide latitude of amendment when the general power is reserved either by constitution or statute. * * *

> "The principle established by the authorities seems to be that the legislature under its reserved power may amend any charter in any respect that is not fundamental when the object of the corporation and property acquired by it are considered. Granting that it may not convert a corporation into something entirely foreign to the object for which it was created, such as turning an insurance company into a railroad company for instance, still it can regulate investments, methods of administration and details of procedure in the interest of the public and of all concerned. The public is interested in the proper management of a company with such enormous assets as the defendant possesses, because, if for no other reason, those assets were mainly derived from the public."

Clearly, the power is here exercised merely over methods of administration and details of procedure to be followed by the corporations in the interest of the public and of all concerned. On this ground alone, therefore, it seems clear that the constitutionality of these enactments is beyond question.

The same principles were laid down by this court in the Berea College case, already referred to.

> See also *Sinking Fund Cases*, 99 U. S. 700, *Spring Valley Water Co.* v. *Schlotter*, 110 U. S. 347.

2. *The present enactments are not subversive of the objects for which the corporations were formed and do not deprive them of vested rights.*

It cannot be contended that the plaintiff in error, for instance, is deprived of any vested rights or property by the enforcement of these statutes. Methods or administration are perhaps made more expensive in

certain particulars but that is true whenever an amendment to the General Corporation Law or Stock Corporation Law of the State is passed involving additional reports to be made to State officers. Any other changes of administration might involve similarly increased expenditures, but on that ground it would never be seriously contended that the corporations affected were deprived of property or of vested rights.

D. THESE STATUTES ARE NOT UNCONSTITUTIONAL AS AN EXERCISE OF THE RESERVED POWER TO AMEND CORPORATE CHARTERS EVEN IF WE SHOULD ASSUME FOR ARGUMENT'S SAKE THAT THEY NECESSARILY LIMITED SOMEWHAT THE FREEDOM OF CONTRACT OF THE EMPLOYEES OF SUCH CORPORATIONS.

It is well established by the decisions that only those persons belonging to the class for whose benefit the particular constitutional provision in question was enacted may legally raise the question that the statute violates such provision.

> *Red River Valley Bank* v. *Craig*, 181 U. S. 548, 558, and cases cited.
> *Hatch* v. *Reardon*, 204 U. S. 152, 160, and cases cited.

In other words it is perfectly clear, under these and numerous other authorities, that the plaintiff in error cannot succeed by alleging that these statutes deprive its employees of freedom of contract. So far as these are concerned, that question is merely academic. It can be raised only by the employees themselves, and if they do not care to object to the law on that ground this plaintiff in error is not at liberty to do so. The constitutional protection can be invoked to void a statute only by a person for whose protection it was enacted.

In the case of *Yazoo & Mississippi Railroad Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217, this court had before it a statute of the State of Mississippi imposing a penalty on common carriers for failure to settle claims for lost or damaged goods in shipment within the State within a reasonable specified period. In the opinion of this court written by Mr. Justice Van Deventer (p. 219), this court clearly announced that it

> "must deal with the case in hand and not with imaginary ones. It suffices, therefore, to hold that applied to cases like the present the statute is valid. How the State court may apply it to other cases, whether its general words may be treated as more or less restrained and how far parts of it may be sustained if others fail, are matters upon which we need not speculate now."

Accepting the argument for what it is worth, however, without regard to its source, it is still clear upon analysis that it is without force. Of course, it can have no application if these statutes are sustained as an exercise of the police power, because that power is not restrained within its legitimate field by the provisions of the Federal Constitution, designed to protect liberty and property from confiscation without due process of law. The question, therefore, can only be raised where the statutes are supported as a proper exercise of the reserved power to amend corporate charters. Assuming that in other respects the laws may be sustained as an exercise of this power, it logically and necessarily follows that they do not deprive any employee of his liberty or freedom of contract, because no one has a right to enter into contracts with corporations which are *ultra vires* for those corporations to make. No employee has the right to say that his freedom of contract

is impaired because he cannot enter into any contract which he may wish to make with a corporation.

In *State* v. *Brown & Sharpe Mfg. Co.*, 18 R. I. 16, 17 L. R. A. 856, the constitutionality of the weekly payment law of Rhode Island was sustained. Speaking of the argument that the freedom of contract of the laboring man was impaired, the court said (page 864):

> "No inhibition is placed upon employees to make such contracts as they choose, with any person or body, natural or artificial, that is authorized to contract with them. But corporations are artificial bodies, and possess only such powers as are granted to them, and natural persons dealing with them have no right to demand that greater power should be granted to corporations in order that they may make other contracts with such corporations than the corporations are authorized to enter into."

If the present statutes, therefore, are regarded as an exercise by the State of its reserved power to amend charters, they are not unconstitutional as depriving employees of freedom of contract without due process of law.

This discussion of the argument has been merely for the purpose of showing the fact that it is without merit. The further fact that it cannot be urged by plaintiff in error has already been considered, so that even if the argument itself were based upon valid grounds, it could not be availed of here.

E. THE VALIDITY OF SIMILAR LAWS HAS BEEN FREQUENTLY UPHELD BY THE COURTS OF OTHER STATES AND BY THIS COURT, UPON THIS VERY GROUND.

A concise review of some of the leading cases in the Federal courts, and in the courts of other States, in which the question of the validity of statutes similar

to or identical with those here questioned has been raised, may be helpful. (In the Court of Appeals Judge Bartlett cited and discussed a number of such cases — most of these we have for that reason omitted here.) In many of them the constitutionality of the legislation has been sustained on the ground that it was a legitimate exercise of the reserved power to amend corporate charters. In many others, the decision was placed upon the ground of the police power, and in some, upon both grounds.

In *Peel Splint Coal Company*, v. *West Virginia*, 36 W. Va. 802, 17 L. R. A. 385, a statute of West Virginia forbidding payment in scrip by any corporation and forbidding the payment of laborers for coal by weight except by weighing it before screening, was sustained. The opinion of the court is very exhaustive, reviewing authorities at length, and is based upon two grounds: First, that the defendant is a corporation in the enjoyment of extraordinary and unusual privileges and, therefore, subject to exceptional regulation; and, second, that it was a licensee pursuing a vocation peculiarly subject to State supervision. Discussion by the court shows that the police power was also relied upon as a separate ground, as will be seen hereafter.

In *Leep* v. *Railway Company*, 58 Ark. 407, a statute of Arkansas requiring railroads to pay their discharged employees the wages then due them, was sustained as an exercise of the reserved power to amend. This case was followed in *St. Louis, etc., Ry. Co.* v. *Paul*, 64 Ark. 83. The opinion of the court is very elaborate and after referring to the Sinking Fund cases, 99 U. S. 700, and pointing out that there the act of Congress under the reserved power to alter or amend required the railroad companies to provide for the payment of certain debts by a sinking fund before

maturity, which was virtually requiring them to pay debts before they were due, the court said (page 89):

> "The effect of this requirement is to make the wages payable at the time of the discharge or refusal to employ, and to limit the right to contract. But this right was derived from the laws under which the railroad companies were organized, and, according to the cases cited, was subject to be limited, regulated and controlled by the general assembly, under the constitution of this state, whenever, in its opinion, it may be beneficial to the public, in such manner as may be just to the corporators. Consequently, no right of the railroad companies was violated by the act in limiting the right to contract. *Leep* v. *Railroad Company*, 58 Ark. 407."

The case was affirmed by this court (173 U. S. 404), apparently upon the grounds that it was a proper exercise of the reserved power and also that it was for the safety and welfare of the State.

In *Shaffer* v. *Union Mining Company*, 55 Md. 74, an act provided that every corporation engaged in mining or manufacturing or operating a railroad in a certain county and employing ten hands or more, should pay its employees in legal tender. The court held that under the reserved power to alter or amend charters, the Legislature could at pleasure prohibit the corporation from paying its employees otherwise than in money and that the statute was a valid exercise of this power.

In *Skinner* v. *Garnett Gold-Min. Company*, 96 Fed. 735, 744, a California statute requiring all corporations to pay wages monthly was declared constitutional by the United States Circuit Court on the ground that it was a justifiable exercise of the reserved power of the Legislature.

The reasoning of this court in *Atkin* v. *Kansas*, 191 U. S. 207, fully supports the position of the defendant on this branch of the case. That decision upheld the validity of the Eight-hour Law in Kansas which applied to municipal employees and contractors. The ground of the decision was that municipal corporations are creatures of the State and that, therefore, their powers may be enlarged or diminished or modified by the State at will. Where the State, as here, has reserved the power to amend ordinary corporate charters, it is submitted that the same principle applies.

III.

THE STATUTES ARE ALSO CONSTITUTIONAL AS A PROPER AND LEGITIMATE EXERCISE OF THE POLICE POWER OF THE STATE.

If we are correct in either this proposition or the one last asserted, these sections of the Labor Law are constitutional and the judgment of the State court should be affirmed. The learned judge who wrote the opinion in the Court of Appeals of the State of New York based his decision on the first ground, namely: That the statutes were a valid exercise of the reserved power to amend charters of corporations. He did not discuss the police power nor rely upon it to sustain the statute.

A. THE PURPOSES OF THESE ACTS ARE WITHIN THE LIMITS OF THE POLICE POWER AS REPEATEDLY DEFINED BY THE COURTS.

(1) *Definition of Police Power.*

The leading case defining the extent of this power is *Commonwealth* v. *Alger*, 7 Cush. 53. The definition in that case has been repeatedly quoted and exemplified, and was approved by this court in the later case of

Holden v. *Hardy*, 169 U. S. 366, in the following language, (p. 392):

> "The extent and limitations upon this power are admirably stated by Chief Justice Shaw in the following extract from his opinion in *Commonwealth* v. *Alger*, 7 Cush. 53, 84:
>
> "'We think it a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that its use may be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this Commonwealth, as well that in the interior as that bordering on tide waters, is derived directly or indirectly from the Government, and held subject to those general regulations, which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment, as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient.'"

In *Jacobson* v. *Massachusetts*, 197 U. S. 11, at page 26, this court uses the following language in defining the extent of the police power:

> "This court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the

> perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be made, so far as natural persons are concerned.' "

In *People* v. *Ewer*, 141 N. Y. 129, at 132 it is described as including legislation to secure the *comfort, properity and protection* of the community.

Again, in *People ex rel. Nechamcus* v. *Warden, etc.*, 144 N. Y. 529, at 535, it is defined as *extending to any danger, real or anticipated, in social or commercial life and to protecting the welfare, health or prosperity of the State.*

2. IN DETERMINING WHETHER THE LEGISLATURE PROPERLY EXERCISED THIS POWER, THE COURT WILL TAKE INTO CONSIDERATION ALL FACTS OF WHICH IT HAS JUDICIAL KNOWLEDGE, INCLUDING PUBLIC RECORDS OR REPORTS, ENCYCLOPEDIAS, LAWS OF OTHER STATES AND THE GENERAL OR COMMONLY ACCEPTED BELIEF OF THE COMMUNITY.

This proposition is well established by the authorities.

In *Jacobson* v. *Massachusetts*, (*supra*), the constitutionality of the statute of Massachusetts requiring compulsory vaccination was upheld, the defendant on the trial offered certain evidence to prove that by the opinions of certain physicians vaccination was dangerous. The Massachusetts court held that the exclusion of this evidence was immaterial. That even if it had been admitted the court would still have had to determine the constitutionality of the laws in the light of facts within common knowledge. This ruling on their part was approved by this court (pages 30, 36):

> "It was not compelled to commit a matter involving the public health and safety to the

> final decision of a court or jury. * * * (P. 36.) These offers, in effect, invited the court and jury to go over the whole ground gone over by the legislature when it enacted the statute in question."

This court then proceeded to determine the question of facts of which it could take judicial notice including encyclopedias, medical works, statutes enacted by other states, etc.

Other cases illustrating this principle are

> *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13.
> *McLean* v. *Arkansas*, 211 U. S. 539.

3. THE PURPOSE OF THESE ACTS IS TO BENEFIT THE COMMUNITY AND THE PUBLIC IN VARIOUS WAYS, ARISING OUT OF THE PROTECTION WHICH THEY AFFORD TO THE LARGE CLASS OF MEN EMPLOYED BY CORPORATIONS.

THE PRIMARY PURPOSE OF THESE LAWS, OF COURSE, IS TO SECURE TO THE LABORING MEN THE FULL VALUE OR PURCHASING POWER OF THEIR WAGES.

That section of the Labor Law of the State of New York involved, which requires plaintiff in error to pay its employees their wages in cash was obviously passed to prevent the payment of wages in the form of scrip. The practice had grown up of employers issuing to their employees checks, orders and scrip which could be cashed, perhaps, only at stores under the control of the employer. Employees paid by check experienced difficulty in getting them cashed except in saloons or stores where discount would probably be charged or a part taken in trade at inflated values. The evil to be prevented by requiring cash payment is plain to be seen, and it would be unprofitable to argue the question at length.

Similarly, the regulation of the time of payment is

another means for accomplishing this same result. The longer the payment of wages is deferred the more frequent resort must be made to credit or to borrowing, both of which decrease the purchasing power of wages. Workingmen can not be paid too often. They usually have no money laid by, and depend on their wages to keep their families from want. If they are able to lay a little by, sickness, death or other misfortune or an intervening period of unemployment, are apt to drain their resources, if any they have, and leave them to depend on credit or borrowing until the next pay day.

Like the section regarding payment in cash, that part of the statute requiring the payment of wages semi-monthly is very beneficial to the working man.

These statutes do not attempt to regulate the amount of wages or the hours of labor, and should be carefully distinguished from statutes of that character. These laws allow absolute freedom of contract as to the amount of compensation, the hours of labor and their purpose is merely to insure to employees that they receive as nearly as possible the amount stated and agreed in the contract, and that at least semi-monthly. If a corporation can not pay as much if it is compelled to pay cash and to make payments a reasonable time after wages are earned, these laws do not prevent it from reducing the wages.

All in all, this legislation is supported by sound public policy. Under these economic conditions the laboring man is somewhat at a disadvantage in negotiating his employment contract with corporations. These laws tend to protect him and put him on equality with his employers. These statutes are justified as prescribing that the general contract shall be reasonable and fair in its terms. They also lift the laboring man from the mental and moral degradation resulting from a continual condition of indebtedness. They tend

to prevent industrial uprisings, and in that way promote the peace and prosperity of the whole community. They give the laboring man more freedom in purchasing the necessities of life.

What we have in mind is well illustrated in the case of *State of Rhode Island* v. *Brown & Sharpe Mfg. Company*, 18 R. I. page 16; 17 L. R. A. 856. In that case the statute provided for weekly payment of the employees of all corporations other than religious, literary or charitable. The court held that it was constitutional both within the State and the Federal constitution and that it was to be regarded as an amendment of the Acts of Incorporation of all such corporations under the general supervision of power to amend or repeal. What the court said with reference to the payment of wages to the laboring man is so much to the point that we repeat it here as a supplement to what we have already said under this head (L. R. A., p. 863):

> "It is a matter of common knowledge that while corporations, owing to this very corporate power of aggregating capital, are the richest and strongest bodies, as a rule, in the state, their employees are often the weakest and least able to protect themselves, frequently being dependent upon their current wages for their daily bread. If they get credit, they must pay for it, as others do, and in proportion to their inability to pay cash and the risk in trusting them, they have to pay for the time indulgence they obtain. To save labor and expense, many corporate payrolls were made up but twelve or thirteen times a year, and sometimes, when corporate means were cramped, even less often, whereby employees were obliged to wait for their pay, and the longer they had to wait the less it was worth to them."

In *Peel Splint Company* v. *West Virginia*, 36 W. Va. 802, 17 L. R. A. 385, upon rehearing the presiding

judge delivered an elaborate opinion in which he called attention to the fact that the laws of England, from the earliest times down to the independence of the United States, had included regulation of the manner of payment of wages, and that the American lawmakers at the time they drew the Constitution must be presumed to have known of the existence of these police powers at common law and in the statute law of England. After pointing out that in various acts passed during the reigns of Edward the Fourth, Elizabeth, Anne and the three Georges, provision was made for the better payment of wages of employees in different industries, and for their payment in lawful money of the realm, the learned judge says in part (L. R. A., p. 395):

> "Upon their very face they proclaim their object 'to prevent abuses and frauds,' and they were therefore police regulations, in the strictest sense of the term. Down through the centuries, hand in hand, and consolidated into one police regulation, have come these conspiracy laws to protect capital, and these Truck Acts to protect labor, and both to protect society; and are we now to be told that the effect of adopting our free American Constitution is to leave in full vigor the power to protect capital, but to destroy the concomitant and correlative power to protect labor? The two powers, associated in their exercise for centuries, have not been divorced by American institutions. Such an idea is not to be entertained for a moment. The American lawmakers are presumed to have known of the existence of these police powers at common law, and in the statute law of England embedded for centuries, and it is not to be presumed, when they framed the restrictions of our Constitutions, that they meant to prohibit the exercise of such police powers, when demanded in behalf of the security of society, and necessary to prevent fraud and abuse."

Another recent case regulating the time of payment of employees' wages is that of *Arkansas Stave Company* v. *State of Arkansas*, 125 S. W. 1001, 27 L. R. A. (N. S.) 255. There a statute requiring all corporations in the State employing salesmen, mechanics, laborers or servants to pay them semi-monthly. The court held that there was no denial of the equal protection of the law in the fact that the statute related to corporations and not to individuals or partnerships, and that it did not interfere with the liberty of contract. The opinion is of special importance, for it reviews at some length cases of importance upon the subject.

4. NOR CAN THERE BE ANY VALID OBJECTION TO THAT PART OF THE STATUTE INVOLVED BECAUSE IT APPLIES TO CORPORATIONS AND NOT TO NATURAL PERSON.

Section 10 of the laws in question requiring cash payment of wages, applies to both corporations and natural persons. It is section 11, requiring railroad corporations to pay their employees semi-monthly, which we have in mind under this discussion. That section requires persons to pay their employees weekly. Steam railroad corporations are required to pay only semi-monthly.

This court has held in a number of recent cases that such a classification is proper and does not invalidate the statute for that reason.

Recent cases in which the principle involved has been discussed by this court are:

Aluminum Co. of America v. *Ramsey*, 222 U. S. 251.
Mutual Loan Co. v. *Martell*, 222 U. S. 225.
Louisville & Nashville R. Co. v. *Melton*, 218 U. S. 36.

In the case of *Aluminum Co. of America* v. *Ramsey* (*supra*) the statutory distinction between railroad and individuals, with respect to the abolishment of the fellow servant doctrine, was held quite proper. In the course of the opinion of this court, written by Mr. Justice McKenna, it was said (p. 256):

> "The distinction (among others) it makes is between railroads operating in the State and individuals, and such distinction has been maintained by this court as not offending the Constitution of the United States. *Tullis* v. *Lake Erie & Western R. R. Co.*, 175 U. S. 348; *Minnesota Iron Co.* v. *Kline*, 199 U. S. 593. See also *Employers' Liability cases*, 207 U. S. 463, 504, and *El Paso, etc., R. Co.* v. *Gutierrez*, 215 U. S. 87."

In the case of *Mutual Loan Co.* v. *Martell* (*supra*) this court sustained a State statute making invalid the assignment of wages of employees employed by any person or corporation except national banks and banks under the supervision of the bank commissioner. In speaking on this head Mr. Justice McKenna, who also delivered the opinion of this court in the case, said (p. 235):

> "This contention attacks section 6 of the statute which exempts from its provisions certain banks, banking institutions and loan companies. It is urged that the provision is discriminatory and therefore denies to plaintiff the equal protection of the laws.
>
> "We have declared so often the wide range of discretion which the legislature possesses in classifying the objects of its legislation that we may be excused from a citation of the cases. We shall only repeat that the classification need not be scientific nor logically appropriate, and if not palpably arbitrary and is uniform

> within the class, it is within such discretion. The legislation under review was directed at certain evils which had arisen, and the legislature, considering them and from whence they arose, might have thought or discerned that they could not or would not arise from a greater freedom to the institutions mentioned than to individuals. This was the view that the Supreme Judicial Court took, and, we think, rightly took. The court said that the legislature might have decided that the dangers which the statute was intended to prevent would not exist in any considerable degree in loans made by institutions which were under the supervision of bank commissioners, and 'believed rightly that the business done by them would not need regulation in the interest of employes or employers.'"

In *Louisville & Nashville R. R. Co.* v. *Melton* (*supra*) the employers liability statute of the State of Indiana was declared by this court not to be unconstitutional because it subjected railroad employees to a special rule as to the doctrine of fellow servants. No consideration of the distinctions which might arise from accidental circumstances as to the persons and things coming within the general class provided for was ever, the court said, to defeat the statute. The general classification, if sustained in its broad features, could not be struck down by exhibiting special instances in which it might seem to be a denial of equal protection of law. The opinion was delivered by Chief Justice White, in which he said (p. 52):

> "That the Fourteenth Amendment was not intended to and does not strip the States of the power to exert their lawful police authority is settled, and requires no reference to authorities. And it is equally settled—as we

> shall hereafter take occasion to show — as the essential result of the elementary doctrine that the equal protection of the law clause does not restrain the normal exercise of governmental power, but only abuse in the exertion of such authority, therefore that clause is not offended against simply because as the result of the exercise of the power to classify some inequality may be occasioned. That is to say, as the power to classify is not taken away by the operation of the equal protection of the law clause, a wide scope of legislative discretion may be exerted in classifying without conflicting with the constitutional prohibition."

And again at page 54:

> "To this destructive end it is apparent the argument must come, since it assumes that however completely a classification may be justified by general considerations, such classification may not be made if inequalities be detected as to some persons embraced within the general class by a critical analysis of the relation of the persons or things otherwise embraced within the general class."

In *Chicago, Rock Island & Pacific Railway Co.* v. *State of Arkansas*, 219 U. S. 453, this court sustained a statute prescribing the number for the crews of freight trains.

CONCLUSION.

The statute involved is valid as a proper exercise of the reserved power of the State over its own corporations. It is likewise valid as an exercise by the State of its police power. Moreover there is no offensive provision in it because that part of it requiring payment of employees semi-monthly applies only to steam surface railroads.

IV.

THE JUDGMENT OF THE STATE COURTS SHOULD BE AFFIRMED AND THE WRIT DISMISSED WITH COSTS TO THE DEFENDANT IN ERROR.

Dated, April 14, 1914.

THOMAS CARMODY,
Attorney-General, Attorney for Defendant in Error, Albany, N. Y.

JOSEPH A. KELLOGG,
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Deputy Attorneys-General, of Counsel.

that the statute conflicts with some constitutional restraint or does not subserve the public welfare.

The legislature is the judge in the first instance of whether a police regulation is necessary; judicial review is limited, and even an earnest conflict of public opinion does not bring the question of necessity within the range of judicial cognizance.

Cost and inconvenience to the party affected must be very great in order to justify the courts in declaring void the action of the State in exercising its reserved power over charters or its police power.

The effect of the reservation of the power to amend and alter charters of corporations is to make a corporation, from the moment of its creation, subject to the legislative power in those respects as a corporate body; and questions of expediency are for the legislature and not for the courts so long as the amendments or alterations do not defeat or substantially impair the object of the grant or rights vested thereunder.

Alteration of the manner or time of payment of employés does not defeat or substantially impair the object of the charter granted to a railroad corporation, and a state statute, otherwise valid, regulating such time and manner, is not unconstitutional as impairing such charter.

Whether a statute imposes an unjust burden depends upon its validity; and whether the public welfare is subserved thereby is, in the first instance, to be determined by the legislature, whose action the courts will not review unless unmistakably and palpably in excess of legislative power. *McLean* v. *Arkansas*, 211 U. S. 539.

In determining time and manner of payment of wages of employés the legislature can consider the fact that to those who work for a living there is an advantage in the ready purchasing power of cash over deferred payments involving the use of credit.

Where Congress has not acted on the subject, and there is no prohibition on interstate commerce, a State may regulate matters within its police power although incidentally affecting interstate commerce.

Congress has not, as yet, acted in regard to the time and manner of payment of wages of employés of interstate carriers.

A state statute regulating periods of payment of wages of railroad employés' which is limited to the employés wholly within that State or whose duties take them from that State to other States and which is not applicable to those employed in other States, is not a direct burden on interstate commerce.

An employer cannot be heard to attack a state statute relating to payment of wages, on the ground that it denies to some of his employés

the equal protection of the law because they are not within its protection.

The provision of the Labor Law of New York of 1907 requiring semi-monthly payments in cash of wages of employés of certain specified industries, including railroads, is not unconstitutional as denying due process of law, or, as to a railroad company incorporated in that State, as impairing the obligation of the charter contract; nor is it, as it has been construed by the highest court of that State, a direct burden on interstate commerce; but, as so construed, it is a valid exercise of the police power of the State.

Judgment based on 199 N. Y. 108, 525, affirmed.

SUIT brought by plaintiff in error, the Erie Railroad Company (as it was plaintiff below we shall so designate it) to restrain the defendant in error (herein called defendant) from instituting actions to recover penalties for non-compliance with the provisions of the Labor Law of the State of New York (Laws of 1907, c. 415; General Laws, c. 32) which required plaintiff to pay its employés semi-monthly and in cash.

The object of the suit is to test the constitutionality of the law.

The bill is very elaborate and alleges with much detail the following facts: Plaintiff is a New York corporation, and defendant is Commissioner of Labor of the State. Plaintiff maintains a railroad in New York which extends into other States, and operates car floats and other floating equipment, navigating the navigable waters of the United States. These and other equipment are used in the business of plaintiff as a common carrier of persons and property under and in compliance with tariffs duly promulgated and filed under the laws of the State and of the United States; and plaintiff is also a carrier of the United States mails. As a rule, the trains of plaintiff run over an operating division without change of employés. Some of the divisions are interstate and some wholly within the State of New York.

Plaintiff, in carrying out its functions, has in its service upon that portion of its road lying east of Meadville, Pennsylvania, upwards of 15,000 men, who are employed either wholly within or partially within the State of New York, and nearly all of them are employed in the movement of interstate commerce. The great majority of these employés render service in more than one State and many of them who reside in Pennsylvania or New Jersey render a part of their service in New York, and many who reside in the latter State render service in the other two States. The contracts of employment of many of them were made, and in the future must be made, in States other than New York, in which States they must reside.

By the laws of New York plaintiff was vested with its powers as a railroad and to contract and be contracted with for the employment of persons to conduct its operations and enterprises at and for such wages and upon such terms of payment as should or might be mutually agreed on; and thereunder it has been its custom to pay its employés monthly and thus pay them prior to or on the twentieth day of each month the wages earned during the preceding month.

The great majority of plaintiff's employés were in its service prior to January 1, 1908, and all accepted such service with full knowledge of its general and uniform custom so to pay its employés monthly.

Prior to January 1, 1908, there existed and has since existed a contract between plaintiff and its employés that the latter should be paid monthly as stated, and so to pay them, as distinguished from payment twice a month, is not inconsistent with the public interest or hurtful to the public order or detrimental to the common good.

Section 4 of Article I of the Labor Law of the State makes it malfeasance in office, for any officer, agent or employé of the State to violate or evade his duty under

the law or knowingly permit the violation or evasion of the act, and he is subject to removal from office.

Section 9 [1] provides that every railroad company and

[1] "SECTION 9. Cash payment of wages.—Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or any municipal corporation thereof, either as a contractor or a sub-contractor therewith, shall pay to each employé engaged in his, their or its business the wages earned by such employé in cash. No such company, person, firm or corporation shall hereafter pay such employés in script, commonly known as store money-orders. (As amended by c. 443, Laws of 1908.)

"SECTION 10. When wages are to be paid.—Every corporation or joint-stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employé the wages earned by him to a day not more than six days prior to the date of such payment. But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employés thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employés thereof the wages earned by them during the last half of the preceding calendar month. (As amended by c. 442, Laws of 1908.)

"SECTION 11. Penalty for violation of preceding sections.—If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of an employé, as provided in this article, it shall forfeit to the people of the State the sum of fifty dollars for each failure, to be recovered by the factory inspector in his name of office in a civil action; but an action shall not be maintained therefor unless the factory inspector shall have given to the employer at least ten days' written notice that such an action will be brought if the wages due are not sooner paid as provided in this article.

"On the trial of such action, such corporation or association shall not be allowed to set up any defense, other than a valid assignment of such wages, a valid set-off against the same, or the absence of such employé from his regular place of labor at the time of the payment, or an actual tender to such employé at the time of the payment of the wages so earned by him, or a breach of contract by such employé or a denial of the employment."

certain other companies shall pay their employés in cash, and no such company shall pay its employés in script commonly known as store money-orders.

Section 10 requires the payment of employés' wages semi-monthly.

Section 11 imposes a penalty of $50 for each failure to so pay, to be recovered by the factory inspector in his name of office in a civil action, and limits the defenses to the action to a valid assignment of such wages, a valid set-off against the same, or the absence of such employé from his regular place of labor at the time of the payment or an actual tender at the time of the payment or a breach of contract by such employé or a denial of the employment.

The Commissioner of Labor is required to enforce the provisions of the law, and notified plaintiff of his intention to do so, and to sue for the penalties imposed by the act. He expressed his opinion of the act to be that each failure to pay the wages of each employé constituted a separate offense and that the aggregate of the penalties would be $250,000. Plaintiff believes, unless that officer is restrained, that he will exercise his authority under the act.

The employés of plaintiff are distributed over more than 1,819 miles and the making of the payment of their wages in money semi-monthly instead of monthly will impose upon and subject plaintiff to an increased cost and expense of several thousand dollars each month.

The difficulty of semi-monthly payments is described and it is alleged that the drastic and enormous penalties are, by reason of their necessarily aggregate character and effect, so excessive as to evidence legislative intention to unduly limit or prevent judicial inquiry, and practically constrain plaintiff to submit to the statute rather than by contesting its validity to take the chances of the penalties it imposes.

That the statute by its terms prevents plaintiff from

setting up in defense the contracts existing between it and its employés for the payment of their wages once a month and that the statute violates, when applied to plaintiff, various provisions of the Constitution of the State and of the United States, and thereby is repugnant to Article III of the Constitution of the United States and Article VI of the constitution of the State of New York in that it is an invasion by the legislature of the judicial power; and it is also repugnant to § 1 of Article XIV of the Constitution of the United States and § 6, Article I of the constitution of the State of New York in that it deprives plaintiff of property without due process of law; and violates § 10, Article I, of the Constitution of the United States in that it impairs the obligation of contracts. The act in its other provisions deprives plaintiff of property without due process of law and of the equal protection of the laws. It also interferes with and impairs plaintiff's performance and discharge of its duties as a common carrier in interstate commerce, is not a valid exercise of the police power and is illegal and unenforceable and void under articles of the Constitution of the State and of the United States which are enumerated.

By the enforcement of the act plaintiff will be subjected to enormous penalties, a multiplicity of suits and to great and irreparable damage, and plaintiff has no adequate remedy at law.

The answer of the defendant admitted the allegations of the complaint as to the statute and alleged that he intended to give such notice to plaintiff as to enforcing such penalties as he was required by the law to give and enforce. He denied that he had any knowledge or information sufficient to form a belief regarding the truth of the other allegations of the complaint.

A stipulation of facts was entered into by the parties upon which the court entered judgment dismissing the complaint. The judgment was successively affirmed by

OPINION

ERIE RAILROAD COMPANY *v.* WILLIAMS, AS COMMISSIONER OF LABOR OF THE STATE OF NEW YORK.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 274. Argued April 27, 1914.—Decided May 25, 1914.

While it is a fundamental principle that personal liberty includes the power to make contracts, the liberty of making contracts is subject to conditions in the interest of the public welfare, and whether that principle or those conditions shall prevail cannot be defined by any precise or universal formula. Each case must be determined by itself.

Each act of legislation has the presumption that it has been enacted in the public interest and the burden is on him who attacks it.

The burden of the party attacking a police regulation as unconstitutional under the due process clause is not sustained by the mere principle of liberty of contract; it can only be sustained by showing

the Appellate Division of the Supreme Court and by the Court of Appeals.

The facts stipulated practically sustain the allegations of the answer and detail the manner of the payment by plaintiff of its employés. The plaintiff also introduced in evidence an exhibit which classified its employés and showed the number of days work, total compensation and average compensation per day as per pay rolls for the year ending June 30, 1908. Its materiality was contested.

Mr. Frederic D. McKenney, with whom *Mr. George F. Brownell* was on the brief, for plaintiff in error:

The Labor Law of New York is repugnant to the Fourteenth Amendment, in that it deprives the company of property, and specifically deprives the company and those of its employés to whom it applies of liberty without due process of law.

Cases holding to the contrary can be distinguished.

The statute imposes upon the employers to whom it relates a burden that is unjust and a duty which it is impossible to perform.

The excess cost of paying employés twice a month as distinguished from once a month and the burden of care, labor, and responsibility imposed by the statute constitute a direct burden upon interstate commerce and violate the commerce clause of the Federal Constitution.

The statute violates the Fourteenth Amendment in that it denies to the employés of the Erie Railroad Company the equal protection of the laws.

Mechanics, workingmen, and laborers are not a dependent class as compared with other railway employés.

The classification is arbitrary in the fact that it places the burden upon a corporation and does not place it upon individuals and copartners engaged in the same business.

In support of these contentions, see *Adair* v. *United States*, 208 U. S. 161; *Atlantic Coast Line* v. *Wharton*, 207

U. S. 328; *Beardsley* v. *N. Y., L. E. & W. R. R. Co.*, 162 N. Y. 230; *Bedford Quarries Co.* v. *Bough*, 168 Indiana, 671; *Braceville Coal Co.* v. *Illinois*, 147 Illinois, 66; *C., C., C. & St. L. Ry. Co.* v. *Illinois*, 177 U. S. 514; *Colon* v. *Lisk*, 153 N. Y. 188; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; Cooley's Const. Limitations, 7th ed., pp. 837 and 838; *Cotting* v. *Kansas City Stock Yards*, 183 U. S. 79; *Forster* v. *Scott*, 136 N. Y. 577; *Foster* v. *New Orleans*, 94 U. S. 246; *Galveston &c. R. R. Co.* v. *Texas*, 210 U. S. 217; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196; *Godcharles* v. *Wegeman*, 113 Pa. St. 431; *Gulf, Col. &c. Ry. Co.* v. *Ellis*, 165 U. S. 150, 158; *Ill. Cent. R. R.* v. *Illinois*, 163 U. S. 142; *House Bill No. 1230*, 163 Massachusetts, 589; *Matter of Jacobs*, 98 N. Y. 98; *Johnson* v. *Goodyear Mining Co.*, 127 California, 4; *Kane* v. *Erie R. R. Co.*, 133 Fed. Rep. 681; *Lake Shore Ry. Co.* v. *Smith*, 173 U. S. 684; *Lawrence* v. *Rutland R. R. Co.*, 80 Vermont, 370; *Leep* v. *St. L. & I. M. R. R. Co.*, 58 Arkansas, 407; *Leisy* v. *Hardin*, 135 U. S. 100; *Lochner* v. *New York*, 198 U. S. 45; *Lord* v. *Equitable Life Assur. Soc.*, 194 N. Y. 212; *Moran* v. *New Orleans*, 112 U. S. 69; *Rodgers* v. *Coler*, 166 N. Y. 1; *People* v. *Gillson*, 109 N. Y. 389; *People* v. *Hawkins*, 157 N. Y. 1; *People* v. *Orange County Construction Co.*, 175 N. Y. 84; *People* v. *Williams*, 189 N. Y. 131; *Philadelphia S. S. Co.* v. *Pennsylvania*, 112 U. S. 326; *Robbins* v. *Shelby Co.*, 120 U. S. 489; *Republic Iron Co.* v. *Indiana*, 160 Indiana, 379; *San Antonio &c. Ry. Co.* v. *Wilson*, 19 S. W. Rep. 910; *Shields* v. *Ohio*, 95 U. S. 319; *Simpson* v. *Shepherd*, 230 U. S. 352, 398; *State* v. *Brown Mfg. Co.*, 18 R. I. 16; *Toledo, St. L. & W. R. Co.* v. *Long*, 169 Indiana, 316; *Wright* v. *Hart*, 182 N. Y. 330, 344.

Mr. Joseph A. Kellogg, with whom *Mr. Thomas Carmody*, Attorney General of the State of New York, and *Mr. Wilber W. Chambers* were on the brief, for defendant in error:

The courts will not overturn enactments of the legislature of a State unless the clearest and gravest reasons exist for so doing.

Legislative acts will be presumed to be constitutional, and if there is any doubt at all such doubt will be resolved in favor of the validity of legislative acts. *Sinking-Fund Cases*, 99 U. S. 700; *Sweet* v. *Rechel*, 159 U. S. 380; *Home Tel. Co.* v. *Los Angeles*, 211 U. S. 265, 281.

These statutes are a proper exercise of the reserved power to amend corporate charters, contained in the constitution of the State of New York. 1 Rev. Stat. 1827, 600, § 8; Const. N. Y., adopted in 1846 and revised in 1894, Art. VIII, § 1.

The constitutionality of these statutes may be upheld as to corporations under this reserved power of amendment. *Berea College* v. *Kentucky*, 211 U. S. 45. See also *Leep* v. *Railway Co.*, 58 Arkansas, 407.

As to the power of the State to amend corporate charters, see *Adirondack Railway Co.* v. *New York*, 176 U. S. 335; *New York & New Eng. R. R. Co.* v. *Bristol*, 151 U. S. 556, 567; *People* v. *O'Brien*, 111 N. Y. 1; *Greenwood* v. *Freight Co.*, 105 U. S. 13; *Lord* v. *Equitable Life Assur. Soc.*, 194 N. Y. 212.

The single limitation to this general rule is that the power may not be exercised to destroy property or rights guaranteed by the Fourteenth Amendment and by similar provisions of state constitutions. *St. L., I. M. &c. Ry.* v. *Paul*, 173 U. S. 404, 408; *State* v. *Brown Mfg. Co.*, 18 R. I. 16.

The reserved power to amend corporate charters is much greater than the police power. *Dartmouth College Case*, 4 Wheat. 518; *N. Y. & New Eng. R. R. Co.* v. *Bristol*, 151 U. S. 556.

The franchise to be a corporation may be entirely taken away, and the legislature may also prescribe the conditions and terms upon which it will allow the corporation to live

and exercise such franchise. It may enlarge or limit its powers, and increase or limit its burdens. It cannot subvert the purpose for which the corporation was formed by changing an insurance corporation to a railroad company, for instance, but short of that it would seem to have the right to make any regulation which in its judgment is desirable, so long as it does not deprive the corporation of property or impair the obligation of existing contracts. *Mayor* v. *Twenty-third St. R. R. Co.*, 113 N. Y. 311, 317; *Lord* v. *Equitable Life Assur. Soc'ty*, 194 N. Y. 212.

The provisions of the Labor Law here attacked are a legitimate exercise of the reserved power to amend because they relate simply to methods of internal administration to be followed by the corporations and do not deprive the corporations of any vested rights or subvert the purposes for which they were formed.

Regulation of methods of administration or internal management are included within the scope of this reserved power over corporate charters. *Lord* v. *Equitable Life Assur. Soc'ty*, 194 N. Y. 212.

See also *Berea College Case, supra; Sinking Fund Cases*, 99 U. S. 700; *Spring Valley Water Co.* v. *Schlotter*, 110 U. S. 347.

The present enactments are not subversive of the objects for which the corporations were formed and do not deprive them of vested rights.

These statutes are not unconstitutional as an exercise of the reserved power to amend corporate charters even if we should assume for argument's sake that they necessarily limited somewhat the freedom of contract of the employés of such corporations. *Red River Bank* v. *Craig*, 181 U. S. 548, 558; *Hatch* v. *Reardon*, 204 U. S. 152, 160, and cases cited.

These statutes do not deprive the employés of freedom of contract. So far as these are concerned, that question is merely academic. It can be raised only by the employés

themselves, and if they do not care to object to the law on that ground this plaintiff in error is not at liberty to do so. *Yazoo & Miss. R. R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217; *State* v. *Brown Mfg. Co.*, 18 R. I. 16.

The validity of similar laws has been frequently upheld by the courts of other States and by this court, upon this very ground. *Peel Coal Co.* v. *West Virginia*, 36 W. Va. 802; *Leep* v. *Railway Co.*, 58 Arkansas, 407; *St. Louis &c. Ry. Co.* v. *Paul*, 64 Arkansas, 83, aff'd 173 U. S. 404; *Shaffer* v. *Union Mining Co.*, 55 Maryland, 74; *Skinner* v. *Garnett Mining Co.*, 96 Fed. Rep. 735, 744; *Atkin* v. *Kansas*, 191 U. S. 207.

The statutes are also constitutional as a proper and legitimate exercise of the police power of the State.

As to definition of police power, see *Holden* v. *Hardy*, 169 U. S. 366; *Jacobson* v. *Massachusetts*, 197 U. S. 11; *People* v. *Ewer*, 141 N. Y. 129; *Nechamcus* v. *Warden*, 144 N. Y. 529, 535.

In determining whether the legislature properly exercised this power, the court will take into consideration all facts of which it has judicial knowledge, including public records or reports, encyclopedias, laws of other States and the general or commonly accepted belief of the community. *Jacobson* v. *Massachusetts*, *supra*; *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; *McLean* v. *Arkansas*, 211 U. S. 539.

The purpose of these acts is to benefit the community and the public in various ways, arising out of the protection which they afford to the large class of men employed by corporations.

The primary purpose of these laws, of course, is to secure to the laboring men the full value or purchasing power of their wages. Cases *supra*, and *Arkansas Stave Co.* v. *Arkansas*, 125 S. W. Rep. 1001.

There is no valid objection to that part of the statute involved because it applies to corporations and not to natural persons.

A classification of steam railroad companies is proper and does not invalidate the statute for that reason. *Aluminum Co.* v. *Ramsey*, 222 U. S. 251; *Mutual Loan Co.* v. *Martell*, 222 U. S. 225; *Louis. & Nash. R. Co.* v. *Melton*, 218 U. S. 36; *Chi., R. I. & Pac. Ry. Co.* v. *Arkansas*, 219 U. S. 453.

MR. JUSTICE MCKENNA, after stating the case as above, delivered the opinion of the court.

The contention of plaintiff is that the Labor Law is repugnant to the Fourteenth Amendment "in that it deprives the company of property, and specifically deprives the company, and those of its employés to whom it applies, of liberty without due process of law." The contention may be limited at the outset to the rights of the company. It cannot complain for its employés; and before considering the contention thus limited, it is well to see what meaning or extent the Court of Appeals gave to the law.

The court decided that the law operates not only to require the railroads to pay their employés semi-monthly, but prohibits them from making contracts with their employés which shall vary the time of payment. If this were not the meaning of the law, the court said, neither railroads nor their employés would have any ground of complaint (199 N. Y. p. 114) "as both master and servant would be left at liberty to make any contract they pleased in regard to the time when the servant's wages should be payable and the medium in which they should be paid." This liberty not existing, the court stated the contention of the plaintiffs to be that the law deprives them "of the right of making contracts with their employés on advantageous terms, and that this is beyond the power of the legislature." The plaintiff also contended that it was denied the equal protection of the laws.

The opposing contentions were stated to be: (1) The legislation is a proper exercise of the power reserved by the constitution of the State to amend corporate charters; (2) It constitutes a legitimate exercise of the police power of the State.

The court rejected both contentions of plaintiff and sustained the law as an exercise of the power over plaintiff's charter; and, adverting to the objection that the requirement of semi-monthly payments was an unconstitutional interference with interstate commerce, the court said (p. 123): "It is to be observed that it [the law] is not in conflict with any legislation by Congress, nor does it affect interstate commerce directly." And, exhibiting the extent of the operation of the law, it was further said, "It relates to the wages of railway servants employed wholly within the State of New York as well as to the wages of those whose duties take them from this State into others. The subject is one upon which Congress has not undertaken to act."

How far the reserved power of the State over the charters of its corporations was helped out by its police power, the court gave no indication. Indeed, it may be said that in its reference to the reserved power in reviewing the decisions of other States, the sole ground of its decision was the possession and exercise of such power by the State. The court said (p. 127):

"There is an irreconcilable conflict in the decisions in different jurisdictions as to the constitutional validity of labor legislation fixing the medium and time of payment of the wages of those who work for corporations. After the foregoing review of the leading cases, I find no difficulty in sustaining our New York statute on the ground which has been stated. It does not confiscate corporate property directly or indirectly. It does impose a greater future burden upon the corporations to which it relates; but that, I think, is within the power of the legislature to the extent to which it has been exercised in this case."

The legislation having been passed in the exercise of the reserved power of the State, is it valid, notwithstanding it prohibits both the plaintiff and its employés from contracting against its provisions? Plaintiff asserts the negative and attempts to sustain the assertion by a very comprehensive argument in which a number of decisions of this court and of other courts are cited and reviewed. They illustrate by various instances the fundamental and indisputable principle that personal liberty includes the power to make contracts. But liberty of making contracts is subject to conditions in the interest of the public welfare, and which shall prevail—principle or condition—cannot be defined by any precise and universal formula. Each instance of asserted conflict must be determined by itself, and it has been said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of the public. The burden is on him who attacks the legislation, and it is not sustained by declaring a liberty of contract. It can only be sustained by demonstrating that it conflicts with some constitutional restraint or that the public welfare is not subserved by the legislation. The legislature is, in the first instance, the judge of what is necessary for the public welfare, and a judicial review of its judgment is limited. The earnest conflict of serious opinion does not suffice to bring it within the range of judicial cognizance. *C., B. & Q. R. R. Co.* v. *McGuire*, 219 U. S. 549, 565; *German Alliance Insurance Co.* v. *Kansas*, *ante*, page 389.

In considering the competency of the legislative judgment and the power the courts have to review it, we may inquire, what is here complained of? What does the Labor Law of New York do that seriously affects the liberty of plaintiff? It requires cash payments. That requirement is not now resisted. It requires semi-monthly payments. Plaintiff now pays monthly. The extent of its grievance, therefore, is two payments a month instead of one, with

the consequence of expense and inconvenience. It is hardly necessary to say that cost and inconvenience (different words, probably, for the same thing) would have to be very great before they could become an element in the consideration of the right of a State to exert its reserved power or its police power. *New York & N. E. R. R. Co.* v. *Bristol*, 151 U. S. 556; *United States* v. *Un. Pac. Ry. Co.*, 160 U. S. 1; *St. Louis, I. M. &c. Ry. Co.* v. *Paul*, 173 U. S. 404; *Wisconsin &c. R. R. Co.* v. *Jacobson*, 179 U. S. 287. See also *Balt. & Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612.

Putting cost and inconvenience to one side, there would remain only an abstract right. Taking them into consideration they constitute the detriment to which plaintiff is subjected by not being able to make the forbidden contracts. It may be admitted an advantage is taken away from plaintiff, or, to put it another way, a burden is imposed upon it. Is it within the power of the State to impose the burden by virtue of its reserved control over plaintiff? The question must be answered as if the requirement of the law was part of the charter of plaintiff, and in such case it would seem certainly that a liberty of contract could not be asserted against it, for it would be a part of the contract accepted and binding on plaintiff,—a liberty exercised precluding a liberty to be exercised,—and it would seem necessarily to be the very essence of the right of amendment reserved that what could have been put in the charter originally, whatever its consequence, can be added to the charter, whatever the consequence of the addition. Of course, we mean what was and is competent for the State to impose, and we are brought to the narrow question whether a regulation of the time and manner of payment by a railroad of its employés is within the competency of the State to require. A negative answer is contended for, the argument urged to support the contention being that a contract right of dealing with its em-

ployés is conferred by plaintiff's charter, which right the Labor Law takes away and plaintiff is deprived of property because of the expense to which it is subjected, which, it is contended, is not justified by a corresponding public benefit. It would seem, therefore, to be the contention of plaintiff that it acquired by its charter a vested right to deal with its employés according to its own judgment and, as alleged in its answer, that it was vested with its powers as a railroad and to contract and be contracted with, for the employment of persons to conduct its operations and enterprises at and for such wages and upon such terms of payment as might or should be agreed on. In other words, it is the contention that the rights asserted are of the very essence of its grant, giving it the rights of a natural person and investing it with the same immunity from control whether exercised under the police power or the reserved power of amendment. We may, in answering the contention, put aside the rights of natural persons and the rights which might exist under a constitution which did not reserve control in the State. The effect of the control reserved was to make plaintiff, from the moment of creation, subject to the legislative power of alteration and, if deemed expedient, of absolute extinguishment as a corporate body. *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347, 352. And whether expedient or not, is a question for the legislature, not for the courts. *Id.* 353. In other cases the effect of the reserved power of amendment is said to be to make any alteration or amendment of a charter subject to it which will not defeat or substantially impair the object of the grant or any right vested under the grant. *Lake Shore &c. Ry. Co.* v. *Smith*, 173 U. S. 684, 697, 698. *Looker* v. *Maynard*, 179 U. S. 46, 52. Surely the manner or time of paying employés does not come within such limitation. It is a matter of pure administration, not comparable in its burden to those sustained in the cases which we have already cited.

In *St. Louis, Iron Mt. & S. Ry. Co.* v. *Paul, supra*, a law of Arkansas was sustained as an exercise of the reserved power of the State which required a railroad company discharging with or without cause, or refusing to employ, any servant or employé, to pay him his unpaid wages, then earned at the contract rate, without abatement or deduction, to the date of his discharge, and providing that if the same be not paid on such day, then, as a penalty for non-payment, his wages shall continue at the same rate until paid.

In *New York & N. E. Railroad Co.* v. *Bristol, supra*, the railroad company was required to remove various grade crossings at its own expense.

In the *Sinking Fund Cases*, 99 U. S. 700, legislation requiring the creation of a sinking fund was sustained under the reserved power of amendment, and, after reviewing the cases, the court said (p. 721) "that whatever rules Congress might have prescribed in the original charter for the government of the corporation in the administration of its affairs, it retained the power to establish by amendment." Many other cases might be cited, but to cite them would be to accumulate authorities on a proposition which might well be taken at this late day to be incontestable. Indeed, the contention of defendant that the legislation under review might be supported under the police power of the State has justification in cases.

In *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13, a law of the State of Tennessee which required all persons and corporations to redeem in money evidences of indebtedness given to their laborers or employés, in the hands of their laborers, employés, or a *bona fide* holder, came up for consideration. The Knoxville Coal Company paid its employés in cash and in coal orders. It made money by the practice. There was no proof of an express agreement between the company and its employés that the orders should be paid only in coal, except as implied from

accepting the orders, and no proof of an implied agreement except as drawn from the face of the orders and the custom of the company. There was no proof of compulsion except that if the employés did not accept pay in coal orders they had to submit to be in arrears about twenty days, but the company paid in coal orders the whole wages due at the end of each month. Harbison purchased a number of the coal orders and demanded their payment in cash, which was refused. He then brought suit against the company, relying on the statute. The Supreme Court gave him judgment, which was affirmed by this court on the ground that the law was a proper exercise of the police power of the State. This court, by Mr. Justice Shiras, commenting on *St. Louis, Iron Mt. & S. Ry. Co.* v. *Paul, supra,* said that in that case stress was laid upon the reserved power of amendment which the State had (p. 22), "but it is also true that, inasmuch as the right of contract is not absolute in respect to every matter, but may be subjected to the restraints demanded by the safety and welfare of the State and its inhabitants, the police power of the State may, within defined limitations, extend over corporations outside of and regardless of the power to amend charters. *Atchison, Topeka & Santa Fe Railroad* v. *Matthews,* 174 U. S. 96." The ruling was followed in *Dayton Coal & Iron Company* v. *Barton* (183 U. S. 23), although the Dayton Company was not incorporated under the laws of Tennessee.

In *McLean* v. *Arkansas,* 211 U. S. 539, a law of Arkansas required, where miners were employed at quantity rates, and more than ten were employed, that they should be paid by the weight of coal mined by them as it comes from the mine and before it was passed over a screen of any kind. One of the grounds of attack on the law was that it was an unwarranted invasion of the right of contract secured by the Fourteenth Amendment, the argument being that the law prevented the miners from con-

tracting for wages upon the basis of screened coal instead of the weight of the coal as originally produced at the mine. The law was sustained as a proper exercise of the police power of the State.

It is, however, contended by plaintiff that the law under review cannot be sustained either as an exertion of the police power or as an alteration of the charter of plaintiff unless the court can say from a comparison of the systems of payment—monthly and semi-monthly—that the former affects adversely the general welfare or public good and the latter "remedies that evil or condition and of itself does not constitute an unjust burden upon the employer." But whether the law imposes an unjust burden depends upon its validity, and whether the public welfare is subserved by one system or the other is, as we have said, in the first instance, for the legislature to determine, and its judgment will not be reviewed unless "unmistakably and palpably in excess of legislative power." *McLean* v. *Arkansas*, *supra*, 211 U. S. p. 547. The Labor Law of New York cannot be so characterized.

There are certainly advantages of cash payment over deferred payments, and an advantage to those who work for a living of a ready purchasing power for their needs over the use of credit. This is found as a fact by the trial court, and even if there is no affirmative evidence of it, it is the expression of experience.

The next contention of plaintiff is that the cost of paying twice a month is a direct burden on interstate commerce. It is not necessary to review and compare the cases in which this court has pointed out the difference between a direct and indirect burden of state legislation upon interstate commerce or the power of the States in the absence of regulation by Congress. It is enough to say in the present case that Congress has not acted, and there is not, therefore, that impediment to the law of the State; nor is there prohibition in the character of the burden. The

effect of the provision is merely administrative and so far as it affects interstate commerce it does so indirectly. The Court of Appeals, as we have seen, considered that the law relates to the wages of railway servants employed wholly within the State and to those whose duties take them from the State into other States. In other words, did not make it applicable to those employed in other States, and it therefore does not embrace all of the employés of plaintiff, and the contention based upon its application to all is without foundation.

The last contention of plaintiff is that the statute violates the Fourteenth Amendment, "in that it denies to the employés of the Erie Railroad Company the equal protection of the laws." Considerable argument is made to support the contention, in which a comparison is made between the employés, mechanics, workmen and laborers, to whom the law applies, and the other employés of the company, and it is declared that all, if any, suffer from monthly payments and all are entitled, therefore, to receive the benefit of semi-monthly payments. But, as we have said, employés are not complaining, and whatever rights those excluded may have, plaintiff cannot invoke.

Judgment affirmed.

END OF CASE